

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Common Interest Development Law

- Organization of Davis-Stirling Common Interest Development Act
- Procedural Fairness in Association Rulemaking and Decisionmaking

May 2002

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN August 15, 2002.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

This tentative recommendation is the first of a series developed in the course of the Law Revision Commission's ongoing study of common interest development law. The Commission recommends that three changes be made to the Davis-Stirling Common Interest Development Act:

- (1) Descriptive chapter and article headings should be inserted in the body of the Act. The headings will aid use of this complex body of law and will help structure future revisions of the law in a logical manner.
- (2) A procedure should be added to the Act for homeowners association review of a member's proposal to alter the member's separately owned unit. This will ensure that a homeowners association will follow a fair and reasonable decisionmaking process, as required by case law.
- (3) A procedure should be added to the Act for making changes to a homeowners association's operating rules. This will provide members with advance notice of rule changes and provide for member participation in the formulation of operating rules.

This recommendation was prepared pursuant to Resolution Chapter 78 of the Statutes of 2001.

## COMMON INTEREST DEVELOPMENT LAW

### BACKGROUND

1 Common interest housing developments are characterized by (1) separate own-  
2 ership of dwelling space coupled with an undivided interest in common areas, (2)  
3 covenants, conditions, and restrictions that run with the land, and (3) administra-  
4 tion of common property by a homeowners association.

5 The main body of law governing common interest developments is the Davis-  
6 Stirling Common Interest Development Act.<sup>1</sup> Other key statutes include the Sub-  
7 division Map Act, the Subdivided Lands Act, the Local Planning Law, and the  
8 Nonprofit Mutual Benefit Corporation Law, as well as various environmental and  
9 land use statutes. In addition, statutes based on separate, rather than common,  
10 ownership models still control many aspects of the governing law.<sup>2</sup> The complexi-  
11 ties and inconsistencies of this statutory arrangement have been criticized by  
12 homeowners and practitioners, among others.<sup>3</sup>

13 The association boards that administer common interest developments, com-  
14 posed of elected unit owners, encounter a statutory framework that is unduly  
15 complex; the lay volunteers often make mistakes and violate procedures for con-  
16 ducting hearings, adopting budgets, establishing reserves, enforcing parking, and  
17 collecting assessments. The statutes provide no practical enforcement provisions to  
18 deter violations. Housing consumers do not readily understand and cannot easily  
19 exercise their rights and obligations.

20 The Law Revision Commission is reviewing the statutes affecting common  
21 interest developments with the goal of setting a clear, consistent, and unified  
22 policy with regard to their formation and management and the transfer of real  
23 property interests located within them. The objective of the review is to clarify the  
24 law and eliminate unnecessary or obsolete provisions, to consolidate existing  
25 statutes in one place in the codes, and to determine to what extent common interest  
26 housing developments should be subject to regulation.

27 As part of its review, the Commission recommends: (1) that chapter and article  
28 headings be added to the Davis-Stirling Act, and (2) that fair and reasonable statu-  
29 tory procedures be created to govern association rulemaking and association  
30 review of a homeowner proposal to alter the homeowner's separate interest  
31 property.

32 This is the first of a series of recommendations relating to common interest  
33 development law.

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1. Civ. Code § 1350 *et seq.*

2. See, e.g., Civ. Code §§ 1102 *et seq.*, 2079 *et seq.* (real estate disclosure).

3. See, e.g., SR 10 (Lee and Sher) (Apr. 10, 1997); California Research Bureau, *Residential Common Interest Developments: An Overview* (Mar. 1998), available at <<http://www.library.ca.gov>>.

1 STRUCTURE OF DAVIS-STIRLING COMMON  
2 INTEREST DEVELOPMENT ACT

3 The Davis-Stirling Act is an undifferentiated mass of 43 sections, some of them  
4 many pages in length. While the sections tend to follow a roughly logical  
5 sequence, locating material within the body of the Davis-Stirling Act is a  
6 challenge.

7 This situation may contribute to complaints that the statute is confusing and hard  
8 to work with. It may also be a major cause of complaints that the statute fails to  
9 deal with a particular matter, when in fact the statute deals directly with that mat-  
10 ter. Persons who have occasion to refer to the statute simply are unable to locate  
11 the relevant provision in the body of the statute.

12 The Law Revision Commission has concluded that it would be helpful to pro-  
13 vide a general organizational structure to the Davis-Stirling Act. This would be  
14 done simply by adding descriptive chapter and article headings to the statute with-  
15 out touching the body of the statute. No renumbering or rearranging of sections  
16 would be required.

17 The Commission also recommends that a constructional provision be added to  
18 make clear that the new headings do not affect the interpretation or meaning of the  
19 statute.

20 An organizational structure for the Davis-Stirling Act provides a number of ben-  
21 efits. It will assist interested persons in finding their way through the law. It will  
22 also facilitate future development of the law in a logical structure.

23 Because the law has evolved without a clear pattern over its fifteen-year history,  
24 it is possible that retrofitting the statute with an outline that gives the appearance  
25 of an orderly and logical progression of sections could be misleading. There will  
26 be an occasional provision buried in a mass of generally unrelated material.  
27 Likewise, one could look in a somewhat logical place for guidance on a particular  
28 subject and, not finding it, conclude there is no such provision, when in fact the  
29 provision is located in a place not signaled in the outline.

30 On balance, however, the Commission has concluded that an outline would be a  
31 substantial and easily-accomplished improvement in this body of law. The Com-  
32 mission solicits comment on this approach, and also on whether the details of the  
33 proposed structure, including the location and text of the descriptive headings, can  
34 be improved.

35 **Important Note.** The Law Revision Commission has commenced its study of  
36 Common Interest Development Law, and intends to make comprehensive recom-  
37 mendations for needed revisions of the law during the course of the study. The  
38 present proposal for an outline of the statute is an interim measure to facilitate  
39 working with the statute; it should not be taken as the Commission's conclusion as  
40 to any reforms of the law that may be needed. In particular, the Commission plans  
41 to study and make recommendations concerning whether the Davis-Stirling Act

ought to be replaced in its entirety by the Uniform Common Interest Ownership Act. The present proposal should not be read to prejudge that issue.

PROCEDURAL FAIRNESS IN ASSOCIATION  
RULEMAKING AND DECISIONMAKING

As part of its general study of common interest development law, the Law Revision Commission is examining ways in which to minimize reliance on the courts to resolve disputes between a homeowners association and its members. One approach is to reduce the number of disputes that arise by insuring that the procedures used by a homeowners association are fair and reasonable. A decision made under a fair and reasonable procedure is more likely to be a just decision, and is more likely to be accepted by a homeowner who would dispute a decision reached under a procedure that is perceived to be unfair.

Fair and reasonable procedures are already required by law<sup>4</sup> and reflect good public policy. The Commission recommends the creation of statutory procedures governing two types of association decisions: (1) association review of a proposed alteration of a member's separate interest<sup>5</sup> property, and (2) adoption, amendment, or repeal of an "operating rule" to govern the association.<sup>6</sup> These procedures and related provisions are discussed below.

**Review of Proposed Alteration of Separate Interest Property**

The governing documents of many common interest developments require approval of the homeowners association before a member can alter separate interest property. For example, a homeowner might be required to obtain association approval before adding a room, choosing a color of exterior paint, or planting

4. See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) ("When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious."); *Cohen v. Kite Hill Community Ass'n*, 142 Cal. App. 3d 642, 651, 191 Cal. Rptr. 209 (1983) ("The business and governmental aspects of the association and the association's relationship to its members clearly give rise to a special sense of responsibility upon the officers and directors.... This special responsibility is manifested in the requirements of fiduciary duties and the requirements of due process, equal protection, and fair dealing.") (citation omitted). There may also be circumstances where decisionmaking by a private homeowners association is subject to the due process requirements of the U.S. or California Constitutions. See Siegel, *The Constitution and Private Government: Toward the Recognition of Constitutional Rights in Private Residential Communities Fifty Years After Marsh v. Alabama*, 6 Wm. & Mary Bill Rts. J. 461, 493-94 (1998); Rosenberry, *The Application of the Federal and State Constitutions to Condominiums, Cooperatives, and Planned Developments*, 19 Real Prop., Prob. & Tr. J. 1 (1984).

5. See Civ. Code § 1351(l) ("separate interest" defined).

6. Other types of association decisionmaking are already the subject of statutory or regulatory procedures that appear fair and reasonable. These include member discipline (see Civ. Code § 1363(g)-(h); Corp. Code § 7341; 10 Cal. Code Regs. § 2792.26(b)), amendment of governing documents (see Civ. Code §§ 1355, 1355.5, 1356; 10 Cal. Code Regs. § 2792.24), and levying and collection of assessments (see Civ. Code §§ 1366-1367).

1 flowers in a front yard. Existing case law requires that the procedures used in  
2 making such a decision be fair and reasonable.<sup>7</sup> In order to avoid disputes over  
3 whether the procedures followed by an association are fair, the Commission rec-  
4ommends that a statutory procedure be created to govern review of a member's  
5 proposal to alter separate interest property.<sup>8</sup> **All associations would be required**  
6 **to use the statutory procedure.**

7 Under the proposed procedure, a member wishing to alter separate interest prop-  
8erty would submit a written application. Notice of the application would be posted  
9 on the association's official notice board. If the reviewing body determines that the  
10 proposed alteration would require a variance from established standards, or could  
11 have a substantial negative effect on the separate interests of other members,  
12 notice of the proposal would be provided to potentially affected members. Within  
13 45 days after notice of the application is posted, the reviewing body would issue  
14 its written decision. If a decision is not issued in the time required, the proposal  
15 would be deemed approved.<sup>9</sup> The applicant and any member who opposed the  
16 proposal would have a right to appeal the decision to the board of directors. On  
17 appeal, the application would be considered *de novo*, and the board of directors  
18 would issue a written decision that includes a statement explaining the basis for  
19 the decision.<sup>10</sup>

20 A decision of the reviewing body would not be subject to judicial review. A  
21 member dissatisfied with that decision must first appeal it to the board of directors.  
22 The decision on appeal would then be subject to judicial review, under the proce-  
23dure for administrative mandamus.<sup>11</sup> In effect, this approach requires that the  
24 administrative appeal process be exhausted before involving the courts.

25 In addition, the proposed law would require that an association adopt substantive  
26 standards to guide its decisionmaking and would require that a decisionmaker act  
27 in good faith.<sup>12</sup>

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7. See *supra* note 4.

8. See Merritt & Siino, *Architectural Control Committees and the Search for Due Process*, 15 CEB Real Prop. L. Reporter 117, 123-24 (Apr. 1992) ("Although the decisions in *Cohen v. Kite Hill Community Ass'n* and *Ironwood Owners Ass'n IX v. Solomon* provide a basis for the courts to build a body of law setting forth due process requirements for architectural committees, it would be preferable if the legislature were to provide guidance. Thoughtful legislation designed to set forth procedural standards for architectural committees would be less costly and more effective than having these standards evolve on a trial-and-error basis through litigation.").

9. See proposed Civ. Code § 1378.050 *infra*.

10. See proposed Civ. Code § 1378.070 *infra*.

11. See proposed Civ. Code § 1378.080 *infra*.

12. See proposed Civ. Code § 1378.040 *infra*.

1 **Operating Rules**

2 Existing law recognizes that a homeowners association may adopt “operating  
3 rules” to govern the operation of a common interest development.<sup>13</sup> However,  
4 there is no statutory or regulatory procedure governing adoption of operating rules.  
5 Nor is there any clear limit on the scope of such rules.<sup>14</sup> Operating rules may regu-  
6 late minor procedural matters (e.g., rules regulating use of a pool) or important  
7 substantive matters (e.g., rules regulating the appearance of one’s home, or estab-  
8 lishing monetary penalties for violation of the association’s rules). If such rules are  
9 adopted as part of an association’s declaration or by-laws, member approval is  
10 required.<sup>15</sup> However, a board of directors could adopt such rules as “operating  
11 rules” without any member notice or involvement.

12 The proposed law would seek to reduce the likelihood of disputes by standardiz-  
13 ing the procedure for adoption of operating rules. The proposed law would require  
14 that copies of an association’s operating rules be provided to all members.<sup>16</sup> Mem-  
15 bers would receive advance notice and an opportunity to comment on proposed  
16 rule changes<sup>17</sup> and would have an opportunity to challenge a rule change by mem-  
17 ber referendum.<sup>18</sup> The proposed law would also make clear that a rule change is  
18 valid and enforceable only if it is authorized by and consistent with law and the  
19 association’s governing documents.<sup>19</sup>

20 The rulemaking and referendum procedures would only apply to operating rules  
21 that regulate use of the common area, use of a separate interest, use of an exclusive  
22 use common area, member discipline, or assessment collection procedures.<sup>20</sup>  
23 Those types of rules are likely to have a direct effect on member interests.

24 In emergencies the board of directors would be authorized to make an immediate  
25 rule change without prior notice to members or member comment.<sup>21</sup> Emergency

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13. See Civ. Code §§ 1351(j) (“governing documents” includes “operating rules”), 1360.5 (restriction on rules governing pets), 1363(g) (monetary penalty for violation of “governing documents or rules”); 10 Cal. Code Regs. § 2792.21(a) (association may formulate “rules of operation of the common areas and facilities owned or controlled by the Association”).

14. Section 2792.21(a) of Title 10 of the California Code of Regulations includes a limitation on the scope of operating rules, but statutory law does not. Compare Civil Code Section 1360.5(d), which implicitly recognizes the authority of an association to adopt a rule or regulation restricting pet ownership, a matter that involves more than “operation of the common areas and facilities owned or controlled by the Association.”

15. Civ. Code § 1355 (amendment of declaration); 10 Cal. Code Regs. § 2792.24 (amendment of bylaws).

16. Proposed Civ. Code § 1380.030 *infra*.

17. Proposed Civ. Code § 1380.150 *infra*.

18. Proposed Civ. Code §§ 1380.170-1380.180 *infra*. Cf. Elec. Code §§ 9235-9247 (referendum suspending municipal ordinance).

19. Proposed Civ. Code § 1380.020 *infra*.

20. Proposed Civ. Code § 1380.120(a) *infra*.

21. Proposed Civ. Code § 1380.160 *infra*. While the emergency rulemaking procedure would not require a pre-adoption comment period, adoption of a rule under Section 1392 would necessarily take place at a

1 rule changes would be temporary and would not be subject to the member referen-  
2 dum procedure.

3 **Notice Board**

4 The proposed law would require that every homeowners association maintain a  
5 notice board in its common area.<sup>22</sup> The notice board would serve as the location  
6 for posting of notices and decisions required to be posted under the Davis-Stirling  
7 Act. **Many procedural deadlines in the proposed law are based on the date**  
8 **that a notice or decision is posted, as the most certain public notice of the rel-**  
9 **evant event.**<sup>23</sup>

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meeting of the board, at which members are permitted to attend and address the board. See Civ. Code § 1363.05 (“Common Interest Development Open Meeting Act”).

22. Proposed Civ. Code § 1350.8 *infra*.

23. See, e.g., proposed Civ. Code §§ 1378.050(b)-(d), 1378.070(a)-(c), 1380.150 *infra*.



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## PROPOSED LEGISLATION

### PROCEDURAL FAIRNESS IN ASSOCIATION RULEMAKING AND DECISIONMAKING

☞ **Note.** The use of article and chapter headings in the following provisions assumes enactment of the reorganization proposed in this recommendation.

1 **Civ. Code § 1350.7 (added). Document delivery**

2 SEC. \_\_\_\_\_. Section 1350.7 is added to the Civil Code, to read:

3 1350.7. (a) This section applies to delivery of a document to the extent the  
4 section is made applicable by another provision of this title.

5 (b) A document shall be delivered by one of the following methods:

6 (1) Personal delivery.

7 (2) Mail, pursuant to the procedure provided in subdivision (a) of Section 1013  
8 of the Code of Civil Procedure for service of notice by mail.

9 (3) E-mail, facsimile, or other electronic means, if the sender and recipient have  
10 agreed to that method of delivery. A provision of the governing documents  
11 providing for electronic delivery does not constitute agreement by a member of an  
12 association to that form of delivery. If a document is delivered by electronic  
13 means, delivery is complete at the time of transmission.

14 (c) A document may be included in or delivered with a billing statement,  
15 newsletter, or other document that is delivered by one of the methods provided in  
16 subdivision (b).

17 **Comment.** Section 1350.7 is new. It provides general document delivery rules that apply where  
18 this section is incorporated by reference in this title. For provisions incorporating this section by  
19 reference, see Sections 1378.030 (review of proposed alteration of separate interest), 1380.040  
20 (operating rules). Documents subject to this section include various notices and decisions that are  
21 required to be delivered. See, e.g., Sections 1378.050(c) (notice of requested variance or possible  
22 negative effect), 1378.050(d) (written decision on proposed alteration), 1380.150(d) (notice of  
23 rule change).

24 Subdivision (b)(2) provides that delivery by mail is subject to the procedure for service of  
25 notice by mail. See Code Civ. Proc. § 1013(a). Under that procedure, delivery is complete on  
26 deposit in the mail, except that any period of notice and any right or duty to do an act or make any  
27 response within any period or on a date certain after the service of the document that is prescribed  
28 by statute or rule of court is extended by five calendar days (if the delivery address is within  
29 California).

30 See also Sections 1351(a) (“association” defined), 1351(b) (“common area” defined), 1351(j)  
31 (“governing documents” defined).

32 ☞ **Note.** Code of Civil Procedure Section 1013(e) generally provides that service of notice by  
33 facsimile is complete on transmission, except that any period of notice and any right or duty to do  
34 an act or make any response within any period or on a date certain after the service of the  
35 document that is prescribed by statute or rule of court is extended by two court days. Considering  
36 that electronic transmission is virtually instantaneous, Section 1350.7(b)(3) simply provides that  
37 delivery by electronic means is complete on transmission. The Commission would like to receive

1 comments on whether the two day extension provided in Code of Civil Procedure Section 1013(e)  
2 should also apply to delivery by facsimile under this section.

3 **Civ. Code § 1350.8 (added). Document posting**

4 SEC. \_\_\_\_\_. Section 1350.8 is added to the Civil Code, to read:

5 1350.8. (a) A common interest development shall establish and maintain a notice  
6 board in its common area. The notice board shall be the location for posting of any  
7 document that is required to be posted by the board of directors under this title.  
8 The location of the notice board shall be identified in the association’s governing  
9 documents.

10 (b) A document posted on the notice board shall clearly indicate the date the  
11 document is posted.

12 (c) A document that is required to be posted on the association’s notice board  
13 shall also be posted on the association’s Internet Web site, if the association has an  
14 Internet Web site.

15 (d) This section applies to a common interest development regardless of whether  
16 it was created before, on, or after the operative date of this section.

17 **Comment.** Section 1350.8 is new. Subdivision (a) requires that the location of the notice board  
18 be identified in the association’s governing documents. An association’s governing documents  
19 include its operating rules. Section 1351(j).

20 See also Sections 1351(a) (“association” defined), 1351(b) (“common area” defined), 1351(c)  
21 (“common interest development” defined).

22 **Civ. Code §§ 1378.010-1378.090 (added). Review of proposed alteration of separate interest**

23 SEC. \_\_\_\_\_. Article 2 (commencing with Section 1378.010) is added to Chapter 10  
24 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

25 Article 2. Review of Proposed Alteration of Separate Interest

26 **§ 1378.010. Definitions**

27 1378.010. (a) The definitions in this section govern the construction of this  
28 article.

29 (b) “Participating member” means an association member who, before the  
30 reviewing body makes its decision on the proposed alteration, submits to the  
31 reviewing body a comment opposed to a proposed alteration of a separate interest.

32 (c) “Reviewing body” means the person or group authorized by an association’s  
33 governing documents to approve or disapprove the alteration of a separate interest.

34 **Comment.** Section 1378.010 is new. In some associations the reviewing body is the board of  
35 directors. In that situation, an appeal to the board of directors would result in reconsideration of  
36 the board’s decision as the reviewing body and issuance of a written decision to serve as a record  
37 in any judicial review of the decision on appeal. See Sections 1378.070 (appeal process),  
38 1378.080 (judicial review).

39 See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined),  
40 1351(l) (“separate interest” defined).

1    **§ 1378.020. Scope of article**

2       1378.020. If an association’s governing documents require that an owner of a  
3 separate interest obtain association approval before altering a separate interest, this  
4 article governs the association’s decisionmaking process.

5       **Comment.** Section 1378.020 is new. See also Sections 1351(a) (“association” defined), 1351(j)  
6 (“governing documents” defined), 1351(l) (“separate interest” defined).

7    **§ 1378.030. Delivery and posting of documents**

8       1378.030. (a) Section 1350.7 applies to a document required to be delivered  
9 pursuant to this article.

10      (b) Notwithstanding Section 1350.8, a document required to be posted pursuant  
11 to this article shall not be posted on an association’s Internet Web site.

12      **Comment.** Section 1378.030 is new. See also Section 1351(a) (“association” defined).

13    **§ 1378.040. Review standards**

14      1378.040. (a) An association shall adopt substantive standards of general  
15 application to govern its review of a proposed alteration of a separate interest.

16      (b) A member of the reviewing body or of the board of directors of the  
17 association shall make a decision on a proposed alteration of a separate interest in  
18 good faith, based on the information provided by the participants.

19      **Comment.** Section 1378.040 is new. See also Sections 1351(a) (“association” defined), 1351(l)  
20 (“separate interest” defined).

21    **§ 1378.050. Approval process**

22      1378.050. (a) An association member who proposes to alter a separate interest  
23 shall submit a written application to the reviewing body.

24      (b) Within 10 days after receipt of the application, the reviewing body shall post  
25 a notice of application on the association’s notice board. The notice of application  
26 shall include the address of the separate interest that is the subject of the  
27 application and a brief description of the proposed alteration.

28      (c) If a proposed alteration of a separate interest would require a variance from  
29 standards stated in the governing documents, or if the reviewing body determines  
30 that the proposed alteration could have a substantial negative effect on the separate  
31 interests of other association members, the reviewing body shall deliver notice of  
32 the proposed alteration to potentially affected members and request their opinions  
33 on the proposed alteration. The notice shall be delivered within 10 days after the  
34 notice of application is posted.

35      (d) Within 45 days after the notice of application is posted, the reviewing body  
36 shall deliver a written decision to the applicant and to any participating member,  
37 and post the written decision on the association’s notice board. If the reviewing  
38 body does not post a written decision within 45 days after the notice of application  
39 is posted, the application is deemed approved on the 45th day.

1 (e) A written decision approving a proposed alteration of a separate interest shall  
2 state whether the reviewing body received any comment opposed to the alteration  
3 before it made its decision.

4 **Comment.** Section 1378.050 is new. See also Sections 1350.8 (document posting), 1351(a)  
5 (“association” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest”  
6 defined), 1378.010(b) (“participating member” defined), 1378.010(c) (“reviewing body” defined),  
7 1378.030 (delivery of notice).

8 **Notes.**

9 (1) Proposed Section 1378.050(b) requires posting of notice of an application to alter a  
10 member’s separate interest, which would include a general description of the proposed alteration.  
11 This provides neighbors who don’t receive notice pursuant to subdivision (c) an opportunity to  
12 inquire further and object if the proposal is problematic. However, public posting of such a  
13 document would infringe on the privacy of the applicant somewhat. The Commission requests  
14 input on whether the posting requirement strikes the proper balance between the interests of  
15 applicants and other members of an association.

16 (2) Subdivision (d) provides that a proposed alteration is deemed approved if the reviewing  
17 body does not issue a decision in the time specified. This provides an incentive for a reviewing  
18 body to act promptly and ensures that an application cannot be held up through inaction.  
19 However, “deemed approval” may result in approval of an alteration that is clearly improper (e.g.,  
20 an alteration that violates express restrictions in the governing documents), merely as a result of  
21 nonfeasance by the reviewing body. Also, if a reviewing body takes no action, neighbors whose  
22 interests could be affected may not receive advance notice of the proposal, foreclosing an  
23 opportunity for resolution of their concerns within the association’s administrative process.

24 The Commission would like to receive input on whether the proposed rule of deemed approval  
25 is the correct one. If so, should deemed approval be limited in some way? For example, deemed  
26 approval might not apply to a proposed alteration that would violate express restrictions or would  
27 clearly have a major effect on other members’ interests (e.g., a change affecting drainage  
28 patterns).

29 Another alternative would be to reverse the rule, with inaction by the reviewing body deemed  
30 *disapproval* of a proposed alteration. This would eliminate the possibility of improper approval  
31 through nonfeasance and the prospect of approval without any prior notice to neighboring  
32 members. If a member’s application is deemed disapproved, that member would then have an  
33 opportunity to appeal the disapproval to the board of directors. The principal disadvantage of  
34 deemed disapproval is the absence of any incentive for a reviewing body to act promptly on an  
35 application.

36 (3) Should subdivision (d) provide that the reviewing body may not issue a decision until some  
37 number of days after notice of the application is posted (e.g., 10 days)? This would guarantee that  
38 an affected member has at least some opportunity to submit a comment opposing the alteration  
39 before the reviewing body makes its decision. Under proposed Section 1378.070(a), only  
40 members who have submitted comments opposing an alteration before the reviewing body makes  
41 its decision have standing to appeal the decision. The disadvantage of requiring some period of  
42 delay before issuing a decision is that all proposed alterations would be delayed, no matter how  
43 unobjectionable they might be.

44 **§ 1378.060. Commencement of approved alteration**

45 1378.060. (a) Except as provided in subdivision (b), an applicant shall not  
46 commence work on an approved alteration of a separate interest until the period  
47 for appeal of the approval has passed without appeal or the approval has been  
48 upheld on appeal.

1 (b) If a written decision approving alteration of a separate interest states that no  
2 member comments opposing the alteration were received by the reviewing body  
3 before it made its decision, the applicant may commence work on the approved  
4 alteration immediately.

5 **Comment.** Section 1378.060 is new. See also Sections 1351(l) (“separate interest” defined),  
6 1378.010(b) (“participating member” defined), 1378.070 (appeal process).

7 **§ 1378.070. Appeal process**

8 1378.070. (a) An applicant or participating member may appeal the approval or  
9 disapproval of a proposed alteration of a separate interest to the board of directors  
10 of the association. The appeal shall be in writing and shall be delivered to the  
11 board of directors within 30 days after the reviewing body’s decision is posted or  
12 the proposed alteration is deemed approved.

13 (b) Within 10 days after receipt of a timely request for appeal, the board of  
14 directors shall deliver notice of the appeal to the applicant and to any participating  
15 member, and post notice of the appeal on the association’s notice board. The  
16 notice shall state the time and place where the appeal will be heard.

17 (c) Within 45 days after notice of the appeal is posted, the board of directors  
18 shall meet and review de novo the proposed alteration that is the subject of the  
19 appeal. Any association member may testify at the appeal and may submit written  
20 materials in support of or in opposition to the proposed alteration.

21 (d) Within 15 days after hearing the appeal, the board of directors shall deliver  
22 its decision to the applicant and, if the appeal is by a person other than the  
23 applicant, to that person. The decision shall be in writing and shall include a  
24 statement explaining the basis for the decision, including reference to facts,  
25 standards, or provisions of the governing documents that support the decision.

26 **Comment.** Section 1378.070 is new. See also sections 1350.8 (document posting), 1351(a)  
27 (“association” defined), 1351(j) (“governing documents” defined), 1378.010(b) (“participating  
28 member” defined), 1378.010(c) (“reviewing body” defined), 1378.030 (delivery of notice).

29 **§ 1378.080. Judicial review**

30 1378.080. (a) A decision of the reviewing body made under Section 1378.050 is  
31 not subject to judicial review.

32 (b) Any member may seek judicial review of a decision of the board of directors  
33 of the association made under Section 1378.070. Judicial review shall be governed  
34 by Section 1094.5 of the Code of Civil Procedure.

35 (c) A proceeding under subdivision (b) is subject to Section 1354.

36 **Comment.** Section 1378.080 is new. Under subdivisions (a) and (b) judicial review is only  
37 available to review a decision of the board of directors on appeal. Thus, the administrative appeal  
38 process must be exhausted before a member may seek judicial review of a decision on a proposed  
39 alteration.

40 Subdivision (b) provides that a decision on a proposed alteration of a separate interest shall be  
41 reviewed under the procedure for administrative mandamus.

42 Subdivision (c) makes clear that the alternative dispute resolution provisions of Section 1354  
43 also apply to an administrative mandamus proceeding under subdivision (b). This overrides

1 language in Section 1354(b) limiting the alternative dispute resolution provisions to civil actions  
2 for declaratory or injunctive relief.

3 See also sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined),  
4 1351(l) (“separate interest” defined), 1378.010(c) (“reviewing body” defined).

5 **§ 1378.090. Application of article**

6 1378.090. (a) This article applies to review of a proposed alteration of a separate  
7 interest if the application proposing the alteration is submitted to the reviewing  
8 body on or after January 1, 2004.

9 (b) Notwithstanding subdivision (c), nothing in this article affects the procedure  
10 to be used in reviewing an application for alteration of a separate interest  
11 submitted to the reviewing body before January 1, 2004.

12 (c) This article supersedes any provision of an association’s governing  
13 documents that governs the procedure for making a decision on a proposed  
14 alteration of a separate interest.

15 **Comment.** Section 1378.090 governs the application of this article. While the procedural  
16 requirements of this article do not govern an application submitted before January 1, 2004, the  
17 case law requirement that an association follow fair procedures and act in good faith when  
18 enforcing restrictions would apply. See *Ironwood Owners Ass’n IX v. Solomon*, 178 Cal. App. 3d  
19 766, 772, 224 Cal. Rptr. 18 (1986); *Cohen v. Kite Hill Community Ass’n*, 142 Cal. App. 3d 642,  
20 651, 191 Cal. Rptr. 209 (1983).

21 See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined),  
22 1351(l) (“separate interest” defined), 1378.010(c) (“reviewing body” defined).

23 **Civ. Code §§ 1380.010-1380.190 (added). Operating rules**

24 SEC. \_\_\_\_\_. Chapter 11 (commencing with Section 1380.010) is added to Title 6  
25 of Part 4 of Division 2 of the Civil Code, to read:

26 CHAPTER 11. OPERATING RULES

27 Article 1. General Provisions

28 **§ 1380.010. Scope of chapter**

29 1380.010. This chapter does not apply to the following actions by a board of  
30 directors:

31 (a) Making a decision in a specific case that is not intended to apply generally.

32 (b) Setting the amount of a regular or special assessment.

33 (c) Issuing a document that merely repeats existing law or the governing  
34 documents.

35 **Comment.** Section 1380.010 provides that certain actions are not subject to the requirements of  
36 this chapter. Subdivision (a) excludes decisions that are adjudicative or executive in nature.  
37 Subdivision (b) excludes the setting of generally applicable assessments. Budgeting and the  
38 setting of assessments are governed by other law. See Sections 1365-1365.5, 1366. Subdivision  
39 (c) recognizes that mere repetition of an existing rule is not the making of a new rule.

40 See also Section 1351(j) (“governing documents” defined).



1 **§ 1380.020. Validity of operating rule**

2 1380.020. An operating rule is valid and enforceable only if all of the following  
3 conditions are satisfied:

4 (a) The rule is in writing.

5 (b) The rule is within the authority of the board of directors conferred by law or  
6 by the declaration, articles of incorporation or association, or bylaws of the  
7 association.

8 (c) The rule is consistent with governing law and the declaration, articles of  
9 incorporation or association, and bylaws of the association.

10 **Comment.** Section 1380.020 is new. See also Section 1351(a) (“association” defined).

11 **§ 1380.030. Availability of rules**

12 1380.030. (a) As soon as practicable after a person becomes an association  
13 member, the board of directors shall deliver to the member a complete copy of the  
14 operating rules of the association.

15 (b) An association member shall have the right to inspect the association’s  
16 operating rules at any reasonable time.

17 **Comment.** Section 1380.030 is new. Subdivision (b) restricts inspection of operating rules to  
18 inspection at “any reasonable time.” This is similar to the restriction on inspection of accounting  
19 books, records, and minutes under Corporations Code Section 8333 (which is incorporated by  
20 reference in Section 1363(f)).

21 See also Sections 1351(a) (“association” defined), 1368 (disclosure of governing documents on  
22 transfer of title).

23 **§ 1380.040. Delivery of documents**

24 1380.040. A document that is required to be delivered pursuant to this chapter is  
25 subject to Section 1350.7.

26 **Comment.** Section 1380.040 is new.

27 **Article 2. Rulemaking Procedures**

28 **§ 1380.110. “Rule change” defined**

29 1380.110. As used in this chapter, “rule change” means the adoption,  
30 amendment, or repeal of an operating rule by the board of directors.

31 **Comment.** Section 1380.110 is new.

32 **§ 1380.120. Scope of article**

33 1380.120. This article applies to a rule change that affects any of the following  
34 subjects:

35 (a) Use of the common area.

36 (b) Use of a separate interest, including any aesthetic or architectural standards  
37 that govern alteration of a separate interest.

38 (c) Use of an exclusive use common area.

1 (d) Member discipline, including any schedule of monetary penalties for  
2 violation of the governing documents and any procedure for the imposition of  
3 penalties.

4 (e) Assessment collection procedures.

5 **Comment.** Section 1380.120 is new. It limits application of the rulemaking procedures to  
6 certain classes of rule changes. See also Sections 1351(b) (“common area” defined), 1351(i)  
7 (“exclusive use common area” defined), 1351(l) (“separate interest” defined).

8 **§ 1380.130. Legally required rule change**

9 1380.130. (a) If a rule change that is required by law and the board of directors  
10 has no discretion as to the substantive effect of the rule change, the rule change is  
11 not subject to this article.

12 (b) Notwithstanding subdivision (a), a rule change that is required by law is  
13 subject to subdivision (d) of Section 1380.150.

14 **Comment.** Section 1380.130 is new. It reflects the fact that a board of directors may be legally  
15 required to make a specific rule change. In such a case, only the provision requiring delivery of  
16 the rule change is applicable.

17 **§ 1380.140. Compliance standard**

18 1380.140. A rule change is effective only if it is made in good faith and in  
19 substantial compliance with the requirements of this article.

20 **Comment.** Section 1380.140 is new.

21 **§ 1380.150. Rulemaking procedure**

22 1380.150. (a) The board of directors shall deliver notice of a proposed rule  
23 change to every association member and post notice of the proposed rule change  
24 on the association’s notice board. The notice shall include all of the following  
25 information:

26 (1) The text of the proposed rule change.

27 (2) A description of the purpose and effect of the proposed rule change.

28 (3) The deadline for submission of comments on the proposed rule change.

29 (b) For not less than 15 days following posting of a notice of a proposed rule  
30 change, the board of directors shall accept written comments from association  
31 members on the proposed rule change.

32 (c) The board of directors shall consider any comments it receives and shall  
33 make a decision on a proposed rule change at a board meeting. A decision shall  
34 not be made until after the deadline for submission of comments by a member.

35 (d) The board of directors shall deliver notice of a rule change to every  
36 association member and post notice of a rule change on the association’s notice  
37 board. The notice shall set out the text of the rule change and state the date the rule  
38 change takes effect. The date the rule change takes effect shall be not less than 15  
39 days after notice of the rule change is posted on the association’s notice board.

40 **Comment.** Section 1380.150 is new. It establishes a notice and comment procedure for  
41 adoption, amendment, or repeal of an operating rule. Subdivision (c) provides that a decision on a

1 proposed rule change shall be made at a meeting of the board of directors. See Section 1363.05  
2 (“Common Interest Development Open Meeting Act”). Subdivisions (a) and (d) require that  
3 notice be provided to every member. Failure to provide notice to every member will not  
4 invalidate a rule change if the failure is inadvertent. See Section 1380.140.

5 See also Sections 1350.8 (document posting), 1351(a) (“association” defined), 1380.110 (“rule  
6 change” defined), 1380.040 (delivery of notice).

7 **Note.** Subdivision (a) provides for delivery of notice of a proposed rule change to every  
8 member and posting of the notice on the association’s notice board. The Commission would like  
9 to receive comment on whether posting would, by itself, be sufficient. Notice of a final rule  
10 change would still be mailed to every member under subdivision (d).

### 11 **§ 1380.160. Emergency rulemaking procedure**

12 1380.160. (a) If the board of directors of an association determines that an  
13 immediate rule change is necessary to address an imminent threat to public health  
14 or safety, or an imminent risk of substantial economic loss to the association, it  
15 may make the rule change immediately.

16 (b) As soon as possible after making a rule change under this section, but not  
17 more than 15 days after making the rule change, the board of directors shall  
18 deliver notice of the rule change to every association member and post the notice  
19 on the association’s notice board. The notice shall include the text of the rule  
20 change and an explanation of why an immediate rule change is required to address  
21 an imminent threat to public health or safety, or an imminent risk of substantial  
22 economic loss to the association.

23 (c) A rule change made under this section is effective for 120 days, unless the  
24 rule change provides for a shorter effective period.

25 (d) A rule change made under this section may not be readopted under this  
26 section. In order to readopt a rule change made under this section, the board of  
27 directors shall follow the procedure provided in Section 1380.150.

28 **Comment.** Section 1380.160 is new. It establishes a procedure for making an emergency rule  
29 change. Subdivision (c) provides that an emergency rule change is temporary. Subdivision (d)  
30 makes clear that the effective period of an emergency rule change may not be extended by  
31 readopting the rule change under the emergency rulemaking procedure.

32 See also Sections 1350.8 (document posting), 1351(a) (“association” defined), 1380.110 (“rule  
33 change” defined), 1380.040 (delivery of notice).

### 34 **§ 1380.170. Referendum procedure**

35 1380.170. (a) A rule change made under Section 1380.150 is immediately  
36 suspended on receipt by the board of directors of a referendum petition that  
37 satisfies all of the following requirements:

38 (1) The petition sets out the text and effective date of the rule change that is to be  
39 suspended.

40 (2) The petition is signed by association members owning more than 25 percent  
41 of the separate interests, or more than 500 separate interests, whichever is less.

42 (3) The petition is delivered within 30 days after notice of the rule change is  
43 posted on the association’s notice board.

1 (b) Within 15 days after a rule change is suspended, the board of directors shall  
2 deliver notice of the suspension to every association member and post notice of the  
3 suspension on the association’s notice board.

4 **Comment.** Section 1380.170 is new. It authorizes suspension of a rule change by member  
5 referendum. The referendum process does not apply to a rule change made under the emergency  
6 rulemaking procedure. See Section 1380.160 (emergency rulemaking procedure). Disposition of a  
7 suspended rule change is governed by Section 1380.180.

8 See also Sections 1350.8 (document posting), 1351(a) (“association” defined), 1351(c)  
9 (“common interest development” defined), 1351(l) (“separate interest” defined), 1380.110 (“rule  
10 change” defined), 1380.040 (delivery of notice).

11 **Notes.** (1) If a board of directors adopts multiple rule changes as part of a single rulemaking  
12 “package,” should the proposed law permit suspension of individual rule changes within the  
13 package, or should it require suspension of the package as a whole? If suspension of separate  
14 changes is permitted, it may be difficult to determine whether changes are actually separate or are  
15 so closely integrated with other changes that they must stand or fall together. If, in order to avoid  
16 difficult line drawing questions, the proposed law does not permit suspension of separate parts of  
17 a package, then many unobjectionable changes may be suspended in order to suspend one  
18 controversial change. The Commission would like to receive comments on whether this issue  
19 should be addressed in the proposed law, and if so, how it should be addressed.

20 (2) In subdivision (a)(2), the number of signatures required for a successful referendum is based  
21 on the number of interests owned by signatories, rather than the number of members who sign  
22 (i.e., one-interest-one-vote, rather than one-member-one-vote). This is generally consistent with  
23 the Department of Real Estate regulation governing member voting rights, which provides a  
24 default rule of “one vote for each subdivision interest owned.” 10 Cal. Code Regs. § 2792.18(a).  
25 It is also consistent with the default statutory procedure for amending a declaration. See Civ.  
26 Code § 1355(b) (requiring approval of “owners representing more than 50 percent ... of the  
27 separate interests in the common interest development”). An alternative approach would be to  
28 require the signatures of more than 25 percent of the association’s *members*, or 500 *members*,  
29 whichever is fewer. Each rule would strike a different balance between the interests of individual  
30 members and the interests of members who own more than a single separate interest. Note that  
31 the same issue arises with respect to the results of voting in an election under Section 1380.180.  
32 The Commission solicits comment on whether the standards for qualifying petitions or for  
33 election results should be based on the number of interests owned or the number of individual  
34 members.

35 **§ 1380.180. Disposition of suspended rule change**

36 1380.180. (a) If a rule change is suspended by referendum, the board of directors  
37 shall either reverse the rule change or hold an election to determine whether the  
38 rule change should be reinstated.

39 (b) A referendum election shall be conducted in accordance with Chapter 5  
40 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Section  
41 7613 of, the Corporations Code.

42 (c) In a referendum election, the ballot shall set out the text of the suspended rule  
43 change and shall present the following question for decision:

44 “Shall the operating rules of the association be adopted, amended, or repealed as  
45 provided in this ballot?”

1 (d) If a majority of the votes cast in a referendum election are affirmative, the  
2 rule change is immediately reinstated. If fewer than a majority of the votes are  
3 affirmative, the rule change is reversed.

4 (e) Within 15 days after a referendum election is held, the board of directors  
5 shall deliver notice of the results of the election to every association member and  
6 post notice of the results on the association's notice board.

7 (f) A rule change that is reversed under this section may not be readopted by the  
8 board of directors within one year following its reversal.

9 **Comment.** Section 1380.180 is new. Subdivision (f) restricts readoption of a reversed rule.  
10 That subdivision applies regardless of whether the rule is reversed voluntarily by the board or is  
11 reversed as a result of an election.

12 See also Sections 1351(a) ("association" defined), 1350.8 (document posting), 1380.110 ("rule  
13 change" defined), 1380.040 (delivery of documents), 1380.170 (referendum procedure).

14 **§ 1380.190. Application of article**

15 1380.190. (a) This article applies to a rule change made on or after January 1,  
16 2004.

17 (b) Nothing in this article affects the validity of a rule change made before  
18 January 1, 2004.

19 (c) This article supersedes any provision of an association's governing  
20 documents that governs the procedure for making a rule change.

21 **Comment.** Section 1380.190 governs the application of this chapter. See also Sections 1351(a)  
22 ("association" defined), 1351(c) ("common interest development" defined), 1351(j) ("governing  
23 documents" defined).



## ORGANIZATION OF DAVIS-STIRLING ACT

**Note.** The following chapter and article headings, along with proposed Civil Code Section 1350.5 on the effect of headings, are proposed to be added to the Davis-Stirling Common Interest Development Act. The sections comprising the Act are also set out, unchanged, for reference.

### 1 TITLE 6. COMMON INTEREST DEVELOPMENTS

#### 2 CHAPTER 1. GENERAL PROVISIONS

##### 3 Article 1. Preliminary Provisions

4 1350. This title shall be known and may be cited as the Davis-Stirling Common Interest  
5 Development Act.

##### 6 **1350.5 (added). Effect of headings**

7 SEC. \_\_\_\_ . Section 1350.5 is added to the Civil Code, to read:

8 1350.5. Division, part, title, chapter, article, and section headings do not in any  
9 manner affect the scope, meaning, or intent of this title.

10 **Comment.** Section 1350.5 is a standard provision found in many codes. See, e.g., Evid. Code §  
11 5; Fam. Code § 5; Prob. Code § 4.

##### 12 Article 2. Definitions

13 1351. As used in this title, the following terms have the following meanings:

14 (a) “Association” means a nonprofit corporation or unincorporated association created  
15 for the purpose of managing a common interest development.

16 (b) “Common area” means the entire common interest development except the separate  
17 interests therein. The estate in the common area may be a fee, a life estate, an estate for  
18 years, or any combination of the foregoing. However, the common area for a planned  
19 development specified in paragraph (2) of subdivision (k) may consist of mutual or  
20 reciprocal easement rights appurtenant to the separate interests.

21 (c) “Common interest development” means any of the following:

22 (1) A community apartment project.

23 (2) A condominium project.

24 (3) A planned development.

25 (4) A stock cooperative.

26 (d) “Community apartment project” means a development in which an undivided  
27 interest in land is coupled with the right of exclusive occupancy of any apartment located  
28 thereon.

29 (e) “Condominium plan” means a plan consisting of (1) a description or survey map of  
30 a condominium project, which shall refer to or show monumentation on the ground, (2) a  
31 three-dimensional description of a condominium project, one or more dimensions of  
32 which may extend for an indefinite distance upwards or downwards, in sufficient detail to  
33 identify the common areas and each separate interest, and (3) a certificate consenting to  
34 the recordation of the condominium plan pursuant to this title signed and acknowledged  
35 by the following:

1 (i) The record owner of fee title to that property included in the condominium project.

2 (ii) In the case of a condominium project which will terminate upon the termination of  
3 an estate for years, the certificate shall be signed and acknowledged by all lessors and  
4 lessees of the estate for years.

5 (iii) In the case of a condominium project subject to a life estate, the certificate shall be  
6 signed and acknowledged by all life tenants and remainder interests.

7 (iv) The certificate shall also be signed and acknowledged by either the trustee or the  
8 beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage  
9 encumbering the property.

10 Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests  
11 do not need to sign the condominium plan. Further, in the event a conversion to  
12 condominiums of a community apartment project or stock cooperative has been approved  
13 by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to  
14 Section 66452.10 of the Government Code, the certificate need only be signed by those  
15 owners, trustees, beneficiaries, and mortgagees approving the conversion.

16 A condominium plan may be amended or revoked by a subsequently acknowledged  
17 recorded instrument executed by all the persons whose signatures would be required  
18 pursuant to this subdivision.

19 (f) A “condominium project” means a development consisting of condominiums. A  
20 condominium consists of an undivided interest in common in a portion of real property  
21 coupled with a separate interest in space called a unit, the boundaries of which are  
22 described on a recorded final map, parcel map, or condominium plan in sufficient detail  
23 to locate all boundaries thereof. The area within these boundaries may be filled with air,  
24 earth, or water, or any combination thereof, and need not be physically attached to land  
25 except by easements for access and, if necessary, support. The description of the unit may  
26 refer to (1) boundaries described in the recorded final map, parcel map, or condominium  
27 plan, (2) physical boundaries, either in existence, or to be constructed, such as walls,  
28 floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing  
29 one or more units, or (4) any combination thereof. The portion or portions of the real  
30 property held in undivided interest may be all of the real property, except for the separate  
31 interests, or may include a particular three-dimensional portion thereof, the boundaries of  
32 which are described on a recorded final map, parcel map, or condominium plan. The area  
33 within these boundaries may be filled with air, earth, or water, or any combination  
34 thereof, and need not be physically attached to land except by easements for access and,  
35 if necessary, support. An individual condominium within a condominium project may  
36 include, in addition, a separate interest in other portions of the real property.

37 (g) “Declarant” means the person or group of persons designated in the declaration as  
38 declarant, or if no declarant is designated, the person or group of persons who sign the  
39 original declaration or who succeed to special rights, preferences, or privileges designated  
40 in the declaration as belonging to the signator of the original declaration.

41 (h) “Declaration” means the document, however denominated, which contains the  
42 information required by Section 1353.

43 (i) “Exclusive use common area” means a portion of the common areas designated by  
44 the declaration for the exclusive use of one or more, but fewer than all, of the owners of  
45 the separate interests and which is or will be appurtenant to the separate interest or  
46 interests.

47 (1) Unless the declaration otherwise provides, any shutters, awnings, window boxes,  
48 doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware  
49 incident thereto, screens and windows or other fixtures designed to serve a single separate



1 interest, but located outside the boundaries of the separate interest, are exclusive use  
2 common areas allocated exclusively to that separate interest.

3 (2) Notwithstanding the provisions of the declaration, internal and external telephone  
4 wiring designed to serve a single separate interest, but located outside the boundaries of  
5 the separate interest, are exclusive use common areas allocated exclusively to that  
6 separate interest.

7 (j) “Governing documents” means the declaration and any other documents, such as  
8 bylaws, operating rules of the association, articles of incorporation, or articles of  
9 association, which govern the operation of the common interest development or  
10 association.

11 (k) “Planned development” means a development (other than a community apartment  
12 project, a condominium project, or a stock cooperative) having either or both of the  
13 following features:

14 (1) The common area is owned either by an the association or in common by the  
15 owners of the separate interests who possess appurtenant rights to the beneficial use and  
16 enjoyment of the common area.

17 (2) A power exists in the association to enforce an obligation of an owner of a separate  
18 interest with respect to the beneficial use and enjoyment of the common area by means of  
19 an assessment which may become a lien upon the separate interests in accordance with  
20 Section 1367.

21 (l) “Separate interest” has the following meanings:

22 (1) In a community apartment project, “separate interest” means the exclusive right to  
23 occupy an apartment, as specified in subdivision (d).

24 (2) In a condominium project, “separate interest” means an individual unit, as specified  
25 in subdivision (f).

26 (3) In a planned development, “separate interest” means a separately owned lot, parcel,  
27 area, or space.

28 (4) In a stock cooperative, “separate interest” means the exclusive right to occupy a  
29 portion of the real property, as specified in subdivision (m).

30 Unless the declaration or condominium plan, if any exists, otherwise provides, if walls,  
31 floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces  
32 of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the  
33 separate interest are part of the separate interest and any other portions of the walls,  
34 floors, or ceilings are part of the common areas.

35 The estate in a separate interest may be a fee, a life estate, an estate for years, or any  
36 combination of the foregoing.

37 (m) “Stock cooperative” means a development in which a corporation is formed or  
38 availed of primarily for the purpose of holding title to, either in fee simple or for a term of  
39 years, improved real property, and all or substantially all of the shareholders of the  
40 corporation receive a right of exclusive occupancy in a portion of the real property, title  
41 to which is held by the corporation. The owners’ interest in the corporation, whether  
42 evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed  
43 to be an interest in a common interest development and a real estate development for  
44 purposes of subdivision (f) of Section 25100 of the Corporations Code.

45 A “stock cooperative” includes a limited equity housing cooperative which is a stock  
46 cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

1 CHAPTER 2. GOVERNING DOCUMENTS

2 Article 1. Creation

3 1352. This title applies and a common interest development is created whenever a  
4 separate interest coupled with an interest in the common area or membership in the  
5 association is, or has been, conveyed, provided, all of the following are recorded:

6 (a) A declaration.

7 (b) A condominium plan, if any exists.

8 (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title  
9 7 of the Government Code requires the recording of either a final map or parcel map for  
10 the common interest development.

11 1352.5. (a) No declaration or other governing document shall include a restrictive  
12 covenant in violation of Section 12955 of the Government Code.

13 (b) Notwithstanding any other provision of law or provision of the governing  
14 documents, the board of directors of an association, without approval of the owners, shall  
15 amend any declaration or other governing document that includes a restrictive covenant  
16 prohibited by this section to delete the restrictive covenant, and shall restate the  
17 declaration or other governing document without the restrictive covenant but with no  
18 other change to the declaration or governing document.

19 (c) If after providing written notice to an association requesting that the association  
20 delete a restrictive covenant that violates subdivision (a), and the association fails to  
21 delete the restrictive covenant within 30 days of receiving the notice, the Department of  
22 Fair Employment and Housing, a city or county in which a common interest development  
23 is located, or any person may bring an action against the association for injunctive relief  
24 to enforce subdivision (a). The court may award attorney's fees to the prevailing party.

25 1353. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal  
26 description of the common interest development, and a statement that the common  
27 interest development is a community apartment project, condominium project, planned  
28 development, stock cooperative, or combination thereof. The declaration shall  
29 additionally set forth the name of the association and the restrictions on the use or  
30 enjoyment of any portion of the common interest development that are intended to be  
31 enforceable equitable servitudes.

32 (b) The declaration may contain any other matters the original signator of the  
33 declaration or the owners consider appropriate.

34 Article 2. Enforcement

35 1354. (a) The covenants and restrictions in the declaration shall be enforceable  
36 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all  
37 owners of separate interests in the development. Unless the declaration states otherwise,  
38 these servitudes may be enforced by any owner of a separate interest or by the  
39 association, or by both.

40 (b) Unless the applicable time limitation for commencing the action would run within  
41 120 days, prior to the filing of a civil action by either an association or an owner or a  
42 member of a common interest development solely for declaratory relief or injunctive  
43 relief, or for declaratory relief or injunctive relief in conjunction with a claim for  
44 monetary damages, other than association assessments, not in excess of five thousand  
45 dollars (\$5,000), related to the enforcement of the governing documents, the parties shall

1 endeavor, as provided in this subdivision, to submit their dispute to a form of alternative  
2 dispute resolution such as mediation or arbitration. The form of alternative dispute  
3 resolution chosen may be binding or nonbinding at the option of the parties. Any party to  
4 such a dispute may initiate this process by serving on another party to the dispute a  
5 Request for Resolution. The Request for Resolution shall include (1) a brief description  
6 of the dispute between the parties, (2) a request for alternative dispute resolution, and (3)  
7 a notice that the party receiving the Request for Resolution is required to respond thereto  
8 within 30 days of receipt or it will be deemed rejected. Service of the Request for  
9 Resolution shall be in the same manner as prescribed for service in a small claims action  
10 as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a  
11 Request for Resolution shall have 30 days following service of the Request for  
12 Resolution to accept or reject alternative dispute resolution and, if not accepted within the  
13 30-day period by a party, shall be deemed rejected by that party. If alternative dispute  
14 resolution is accepted by the party upon whom the Request for Resolution is served, the  
15 alternative dispute resolution shall be completed within 90 days of receipt of the  
16 acceptance by the party initiating the Request for Resolution, unless extended by written  
17 stipulation signed by both parties. The costs of the alternative dispute resolution shall be  
18 borne by the parties.

19 (c) At the time of filing a civil action by either an association or an owner or a member  
20 of a common interest development solely for declaratory relief or injunctive relief, or for  
21 declaratory relief or injunctive relief in conjunction with a claim for monetary damages  
22 not in excess of five thousand dollars (\$5,000), related to the enforcement of the  
23 governing documents, the party filing the action shall file with the complaint a certificate  
24 stating that alternative dispute resolution has been completed in compliance with  
25 subdivision (b). The failure to file a certificate as required by subdivision (b) shall be  
26 grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a  
27 motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing  
28 party certifies in writing that one of the other parties to the dispute refused alternative  
29 dispute resolution prior to the filing of the complaint, that preliminary or temporary  
30 injunctive relief is necessary, or that alternative dispute resolution is not required by  
31 subdivision (b), because the limitation period for bringing the action would have run  
32 within the 120-day period next following the filing of the action, or the court finds that  
33 dismissal of the action for failure to comply with subdivision (b) would result in  
34 substantial prejudice to one of the parties.

35 (d) Once a civil action specified in subdivision (a) to enforce the governing documents  
36 has been filed by either an association or an owner or member of a common interest  
37 development, upon written stipulation of the parties the matter may be referred to  
38 alternative dispute resolution and stayed. The costs of the alternative dispute resolution  
39 shall be borne by the parties. During this referral, the action shall not be subject to the  
40 rules implementing subdivision (c) of Section 68603 of the Government Code.

41 (e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-  
42 complaint.

43 (f) In any action specified in subdivision (a) to enforce the governing documents, the  
44 prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by  
45 any party for attorney's fees and costs to be awarded to the prevailing party in these  
46 actions, the court, in determining the amount of the award, may consider a party's refusal  
47 to participate in alternative dispute resolution prior to the filing of the action.

48 (g) Unless consented to by both parties to alternative dispute resolution that is initiated  
49 by a Request for Resolution under subdivision (b), evidence of anything said or of

1 admissions made in the course of the alternative dispute resolution process shall not be  
2 admissible in evidence, and testimony or disclosure of such a statement or admission may  
3 not be compelled, in any civil action in which, pursuant to law, testimony can be  
4 compelled to be given.

5 (h) Unless consented to by both parties to alternative dispute resolution that is initiated  
6 by a Request for Resolution under subdivision (b), documents prepared for the purpose or  
7 in the course of, or pursuant to, the alternative dispute resolution shall not be admissible  
8 in evidence, and disclosure of these documents may not be compelled, in any civil action  
9 in which, pursuant to law, testimony can be compelled to be given.

10 (i) Members of the association shall annually be provided a summary of the provisions  
11 of this section, which specifically references this section. The summary shall include the  
12 following language:

13 “Failure by any member of the association to comply with the prefiling requirements of  
14 Section 1354 of the Civil Code may result in the loss of your rights to sue the association  
15 or another member of the association regarding enforcement of the governing  
16 documents.”

17 The summary shall be provided either at the time the pro forma budget required by  
18 Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations  
19 Code.

20 (j) Any Request for Resolution sent to the owner of a separate interest pursuant to  
21 subdivision (b) shall include a copy of this section.

### 22 Article 3. Amendment

23 1355. (a) The declaration may be amended pursuant to the governing documents or this  
24 title. Except as provided in Section 1356, an amendment is effective after (1) the approval  
25 of the percentage of owners required by the governing documents has been given, (2) that  
26 fact has been certified in a writing executed and acknowledged by the officer designated  
27 in the declaration or by the association for that purpose, or if no one is designated, by the  
28 president of the association, and (3) that writing has been recorded in each county in  
29 which a portion of the common interest development is located.

30 (b) Except to the extent that a declaration provides by its express terms that it is not  
31 amendable, in whole or in part, a declaration which fails to include provisions permitting  
32 its amendment at all times during its existence may be amended at any time. For purposes  
33 of this subdivision, an amendment is only effective after (1) the proposed amendment has  
34 been distributed to all of the owners of separate interests in the common interest  
35 development by first-class mail postage prepaid or personal delivery not less than 15 days  
36 and not more than 60 days prior to any approval being solicited; (2) the approval of  
37 owners representing more than 50 percent, or any higher percentage required by the  
38 declaration for the approval of an amendment to the declaration, of the separate interests  
39 in the common interest development has been given, and that fact has been certified in a  
40 writing, executed and acknowledged by an officer of the association; and (3) the  
41 amendment has been recorded in each county in which a portion of the common interest  
42 development is located. A copy of any amendment adopted pursuant to this subdivision  
43 shall be distributed by first- class mail postage prepaid or personal delivery to all of the  
44 owners of separate interest immediately upon its recordation.

45 1355.5. (a) Notwithstanding any provision of the governing documents of a common  
46 interest development to the contrary, the board of directors of the association may, after  
47 the developer of the common interest development has completed construction of the

1 development, has terminated construction activities, and has terminated his or her  
2 marketing activities for the sale, lease, or other disposition of separate interests within the  
3 development, adopt an amendment deleting from any of the governing documents any  
4 provision which is unequivocally designed and intended, or which by its nature can only  
5 have been designed or intended, to facilitate the developer in completing the construction  
6 or marketing of the development. However, provisions of the governing documents  
7 relative to a particular construction or marketing phase of the development may not be  
8 deleted under the authorization of this subdivision until that construction or marketing  
9 phase has been completed.

10 (b) The provisions which may be deleted by action of the board shall be limited to  
11 those which provide for access by the developer over or across the common area for the  
12 purposes of (a) completion of construction of the development, and (b) the erection,  
13 construction, or maintenance of structures or other facilities designed to facilitate the  
14 completion of construction or marketing of separate interests.

15 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board of  
16 directors of the association shall mail to all owners of the separate interests, by first-class  
17 mail, (1) a copy of all amendments to the governing documents proposed to be adopted  
18 under subdivision (a) and (2) a notice of the time, date, and place the board of directors  
19 will consider adoption of the amendments. The board of directors of an association may  
20 consider adoption of amendments to the governing documents pursuant to subdivision (a)  
21 only at a meeting which is open to all owners of the separate interests in the common  
22 interest development, who shall be given opportunity to make comments thereon. All  
23 deliberations of the board of directors on any action proposed under subdivision (a) shall  
24 only be conducted in such an open meeting.

25 (d) The board of directors of the association may not amend the governing documents  
26 pursuant to this section without the approval of the owners, casting a majority of the  
27 votes at a meeting or election of the association constituting a quorum and conducted in  
28 accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of  
29 Title 1 of, and Section 7613 of, the Corporations Code. For the purposes of this section,  
30 “quorum” means more than 50 percent of the owners who own no more than two separate  
31 interests in the development.

32 1356. (a) If in order to amend a declaration, the declaration requires owners having  
33 more than 50 percent of the votes in the association, in a single class voting structure, or  
34 owners having more than 50 percent of the votes in more than one class in a voting  
35 structure with more than one class, to vote in favor of the amendment, the association, or  
36 any owner of a separate interest, may petition the superior court of the county in which  
37 the common interest development is located for an order reducing the percentage of the  
38 affirmative votes necessary for such an amendment. The petition shall describe the effort  
39 that has been made to solicit approval of the association members in the manner provided  
40 in the declaration, the number of affirmative and negative votes actually received, the  
41 number or percentage of affirmative votes required to effect the amendment in  
42 accordance with the existing declaration, and other matters the petitioner considers  
43 relevant to the court’s determination. The petition shall also contain, as exhibits thereto,  
44 copies of all of the following:

- 45 (1) The governing documents.
- 46 (2) A complete text of the amendment.
- 47 (3) Copies of any notice and solicitation materials utilized in the solicitation of owner  
48 approvals.
- 49 (4) A short explanation of the reason for the amendment.

- 1 (5) Any other documentation relevant to the court's determination.
- 2 (b) Upon filing the petition, the court shall set the matter for hearing and issue an ex  
3 parte order setting forth the manner in which notice shall be given.
- 4 (c) The court may, but shall not be required to, grant the petition if it finds all of the  
5 following:
- 6 (1) The petitioner has given not less than 15 days written notice of the court hearing to  
7 all members of the association, to any mortgagee of a mortgage or beneficiary of a deed  
8 of trust who is entitled to notice under the terms of the declaration, and to the city,  
9 county, or city and county in which the common interest development is located that is  
10 entitled to notice under the terms of the declaration.
- 11 (2) Balloting on the proposed amendment was conducted in accordance with all  
12 applicable provisions of the governing documents.
- 13 (3) A reasonably diligent effort was made to permit all eligible members to vote on the  
14 proposed amendment.
- 15 (4) Owners having more than 50 percent of the votes, in a single class voting structure,  
16 voted in favor of the amendment. In a voting structure with more than one class, where  
17 the declaration requires a majority of more than one class to vote in favor of the  
18 amendment, owners having more than 50 percent of the votes of each class required by  
19 the declaration to vote in favor of the amendment voted in favor of the amendment.
- 20 (5) The amendment is reasonable.
- 21 (6) Granting the petition is not improper for any reason stated in subdivision (e).
- 22 (d) If the court makes the findings required by subdivision (c), any order issued  
23 pursuant to this section may confirm the amendment as being validly approved on the  
24 basis of the affirmative votes actually received during the balloting period or the order  
25 may dispense with any requirement relating to quorums or to the number or percentage of  
26 votes needed for approval of the amendment that would otherwise exist under the  
27 governing documents.
- 28 (e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be empowered  
29 by this section to approve any amendment to the declaration that:
- 30 (1) Would change provisions in the declaration requiring the approval of owners having  
31 more than 50 percent of the votes in more than one class to vote in favor of an  
32 amendment, unless owners having more than 50 percent of the votes in each affected  
33 class approved the amendment.
- 34 (2) Would eliminate any special rights, preferences, or privileges designated in the  
35 declaration as belonging to the declarant, without the consent of the declarant.
- 36 (3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary  
37 of a deed of trust without the approval of the percentage of the mortgagees and  
38 beneficiaries specified in the declaration, if the declaration requires the approval of a  
39 specified percentage of the mortgagees and beneficiaries.
- 40 (f) An amendment is not effective pursuant to this section until the court order and  
41 amendment have been recorded in every county in which a portion of the common  
42 interest development is located. The amendment may be acknowledged by, and the court  
43 order and amendment may be recorded by, any person designated in the declaration or by  
44 the association for that purpose, or if no one is designated for that purpose, by the  
45 president of the association. Upon recordation of the amendment and court order, the  
46 declaration, as amended in accordance with this section, shall have the same force and  
47 effect as if the amendment were adopted in compliance with every requirement imposed  
48 by the governing documents.

1 (g) Within a reasonable time after the amendment is recorded the association shall mail  
2 a copy of the amendment to each member of the association, together with a statement  
3 that the amendment has been recorded.

4 1357. (a) The Legislature finds that there are common interest developments that have  
5 been created with deed restrictions which do not provide a means for the property owners  
6 to extend the term of the declaration. The Legislature further finds that covenants and  
7 restrictions, contained in the declaration, are an appropriate method for protecting the  
8 common plan of developments and to provide for a mechanism for financial support for  
9 the upkeep of common areas including, but not limited to, roofs, roads, heating systems,  
10 and recreational facilities. If declarations terminate prematurely, common interest  
11 developments may deteriorate and the housing supply of affordable units could be  
12 impacted adversely.

13 The Legislature further finds and declares that it is in the public interest to provide a  
14 vehicle for extending the term of the declaration if owners having more than 50 percent  
15 of the votes in the association choose to do so.

16 (b) A declaration which specifies a termination date, but which contains no provision  
17 for extension of the termination date, may be extended by the approval of owners having  
18 more than 50 percent of the votes in the association or any greater percentage specified in  
19 the declaration for an amendment thereto. If the approval of owners having more than 50  
20 percent of the votes in the association is required to amend the declaration, the term of the  
21 declaration may be extended in accordance with Section 1356.

22 (c) Any amendment to a declaration made in accordance with subdivision (b) shall  
23 become effective upon recordation in accordance with Section 1355.

24 (d) No single extension of the terms of the declaration made pursuant to this section  
25 shall exceed the initial term of the declaration or 20 years, whichever is less. However,  
26 more than one extension may occur pursuant to this section.

27 CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

28 1358. (a) In a community apartment project, any conveyance, judicial sale, or other  
29 voluntary or involuntary transfer of the separate interest includes the undivided interest in  
30 the community apartment project. Any conveyance, judicial sale, or other voluntary or  
31 involuntary transfer of the owner's entire estate also includes the owner's membership  
32 interest in the association.

33 (b) In a condominium project the common areas are not subject to partition, except as  
34 provided in Section 1359. Any conveyance, judicial sale, or other voluntary or  
35 involuntary transfer of the separate interest includes the undivided interest in the common  
36 areas. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the  
37 owner's entire estate also includes the owner's membership interest in the association.

38 (c) In a planned development, any conveyance, judicial sale, or other voluntary or  
39 involuntary transfer of the separate interest includes the undivided interest in the common  
40 areas, if any exist. Any conveyance, judicial sale, or other voluntary or involuntary  
41 transfer of the owner's entire estate also includes the owner's membership interest in the  
42 association.

43 (d) In a stock cooperative, any conveyance, judicial sale, or other voluntary or  
44 involuntary transfer of the separate interest includes the ownership interest in the  
45 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or  
46 involuntary transfer of the owner's entire estate also includes the owner's membership  
47 interest in the association.

1 Nothing in this section prohibits the transfer of exclusive use areas, independent of any  
2 other interest in a common interest subdivision, if authorization to separately transfer  
3 exclusive use areas is expressly stated in the declaration and the transfer occurs in  
4 accordance with the terms of the declaration.

5 Any restrictions upon the severability of the component interests in real property which  
6 are contained in the declaration shall not be deemed conditions repugnant to the interest  
7 created within the meaning of Section 711 of the Civil Code. However, these restrictions  
8 shall not extend beyond the period in which the right to partition a project is suspended  
9 under Section 1359.

10 1359. (a) Except as provided in this section, the common areas in a condominium  
11 project shall remain undivided, and there shall be no judicial partition thereof. Nothing in  
12 this section shall be deemed to prohibit partition of a cotenancy in a condominium.

13 (b) The owner of a separate interest in a condominium project may maintain a partition  
14 action as to the entire project as if the owners of all of the separate interests in the project  
15 were tenants in common in the entire project in the same proportion as their interests in  
16 the common areas. The court shall order partition under this subdivision only by sale of  
17 the entire condominium project and only upon a showing of one of the following:

18 (1) More than three years before the filing of the action, the condominium project was  
19 damaged or destroyed, so that a material part was rendered unfit for its prior use, and the  
20 condominium project has not been rebuilt or repaired substantially to its state prior to the  
21 damage or destruction.

22 (2) Three-fourths or more of the project is destroyed or substantially damaged and  
23 owners of separate interests holding in the aggregate more than a 50- percent interest in  
24 the common areas oppose repair or restoration of the project.

25 (3) The project has been in existence more than 50 years, is obsolete and uneconomic,  
26 and owners of separate interests holding in the aggregate more than a 50-percent interest  
27 in the common area oppose repair or restoration of the project.

28 (4) The conditions for such a sale, set forth in the declaration, have been met.

29 1360. (a) Subject to the provisions of the governing documents and other applicable  
30 provisions of law, if the boundaries of the separate interest are contained within a  
31 building, the owner of the separate interest may do the following:

32 (1) Make any improvements or alterations within the boundaries of his or her separate  
33 interest that do not impair the structural integrity or mechanical systems or lessen the  
34 support of any portions of the common interest development.

35 (2) Modify a unit in a condominium project, at the owner's expense, to facilitate access  
36 for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter  
37 conditions which could be hazardous to these persons. These modifications may also  
38 include modifications of the route from the public way to the door of the unit for the  
39 purposes of this paragraph if the unit is on the ground floor or already accessible by an  
40 existing ramp or elevator. The right granted by this paragraph is subject to the following  
41 conditions:

42 (A) The modifications shall be consistent with applicable building code requirements.

43 (B) The modifications shall be consistent with the intent of otherwise applicable  
44 provisions of the governing documents pertaining to safety or aesthetics.

45 (C) Modifications external to the dwelling shall not prevent reasonable passage by  
46 other residents, and shall be removed by the owner when the unit is no longer occupied  
47 by persons requiring those modifications who are blind, visually handicapped, deaf, or  
48 physically disabled.



1 (D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his  
2 or her plans and specifications to the association of the condominium project for review  
3 to determine whether the modifications will comply with the provisions of this paragraph.  
4 The association shall not deny approval of the proposed modifications under this  
5 paragraph without good cause.

6 (b) Any change in the exterior appearance of a separate interest shall be in accordance  
7 with the governing documents and applicable provisions of law.

8 1360.5. (a) No governing documents shall prohibit the owner of a separate interest  
9 within a common interest development from keeping at least one pet within the common  
10 interest development, subject to reasonable rules and regulations of the association. This  
11 section may not be construed to affect any other rights provided by law to an owner of a  
12 separate interest to keep a pet within the development.

13 (b) For purposes of this section, “pet” means any domesticated bird, cat, dog, aquatic  
14 animal kept within an aquarium, or other animal as agreed to between the association and  
15 the homeowner.

16 (c) If the association implements a rule or regulation restricting the number of pets an  
17 owner may keep, the new rule or regulation shall not apply to prohibit an owner from  
18 continuing to keep any pet that the owner currently keeps in his or her separate interest if  
19 the pet otherwise conforms with the previous rules or regulations relating to pets.

20 (d) For the purposes of this section, “governing documents” shall include, but are not  
21 limited to, the conditions, covenants, and restrictions of the common interest  
22 development, and the bylaws, rules, and regulations of the association.

23 (e) This section shall become operative on January 1, 2001, and shall only apply to  
24 governing documents entered into, amended, or otherwise modified on or after that date.

25 1361. Unless the declaration otherwise provides:

26 (a) In a community apartment project and condominium project, and in those planned  
27 developments with common areas owned in common by the owners of the separate  
28 interests, there are appurtenant to each separate interest nonexclusive rights of ingress,  
29 egress, and support, if necessary, through the common areas. The common areas are  
30 subject to these rights.

31 (b) In a stock cooperative, and in a planned development with common areas owned by  
32 the association, there is an easement for ingress, egress, and support, if necessary,  
33 appurtenant to each separate interest. The common areas are subject to these easements.

34 1362. Unless the declaration otherwise provides, in a condominium project, or in a  
35 planned development in which the common areas are owned by the owners of the  
36 separate interests, the common areas are owned as tenants in common, in equal shares,  
37 one for each unit or lot.

## 38 CHAPTER 4. GOVERNANCE

### 39 Article 1. Association

40 1363. (a) A common interest development shall be managed by an association which  
41 may be incorporated or unincorporated. The association may be referred to as a  
42 community association.

43 (b) An association, whether incorporated or unincorporated, shall prepare a budget  
44 pursuant to Section 1365 and disclose information, if requested, in accordance with  
45 Section 1368.

1 (c) Unless the governing documents provide otherwise, and regardless of whether the  
2 association is incorporated or unincorporated, the association may exercise the powers  
3 granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the  
4 Corporations Code, except that an unincorporated association may not adopt or use a  
5 corporate seal or issue membership certificates in accordance with Section 7313 of the  
6 Corporations Code.

7 The association, whether incorporated or unincorporated, may exercise the powers  
8 granted to an association by Section 383 of the Code of Civil Procedure and the powers  
9 granted to the association in this title.

10 (d) Meetings of the membership of the association shall be conducted in accordance  
11 with a recognized system of parliamentary procedure or any parliamentary procedures the  
12 association may adopt.

13 (e) Notwithstanding any other provision of law, notice of meetings of the members  
14 shall specify those matters the board intends to present for action by the members, but,  
15 except as otherwise provided by law, any proper matter may be presented at the meeting  
16 for action.

17 (f) Members of the association shall have access to association records in accordance  
18 with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of  
19 Title 1 of the Corporations Code.

20 (g) If an association adopts or has adopted a policy imposing any monetary penalty,  
21 including any fee, on any association member for a violation of the governing documents  
22 or rules of the association, including any monetary penalty relating to the activities of a  
23 guest or invitee of a member, the board of directors shall adopt and distribute to each  
24 member, by personal delivery or first-class mail, a schedule of the monetary penalties that  
25 may be assessed for those violations, which shall be in accordance with authorization for  
26 member discipline contained in the governing documents. The board of directors shall not  
27 be required to distribute any additional schedules of monetary penalties unless there are  
28 changes from the schedule that was adopted and distributed to the members pursuant to  
29 this subdivision .

30 (h) When the board of directors is to meet to consider or impose discipline upon a  
31 member, the board shall notify the member in writing, by either personal delivery or first-  
32 class mail, at least 10 days prior to the meeting. The notification shall contain, at a  
33 minimum, the date, time, and place of the meeting, the nature of the alleged violation for  
34 which a member may be disciplined, and a statement that the member has a right to  
35 attend and may address the board at the meeting. The board of directors of the association  
36 shall meet in executive session if requested by the member being disciplined.

37 If the board imposes discipline on a member, the board shall provide the member a  
38 written notification of the disciplinary action, by either personal delivery or first-class  
39 mail, within 15 days following the action. A disciplinary action shall not be effective  
40 against a member unless the board fulfills the requirements of this subdivision.

41 (i) Whenever two or more associations have consolidated any of their functions under a  
42 joint neighborhood association or similar organization, members of each participating  
43 association shall be entitled to attend all meetings of the joint association other than  
44 executive sessions, (1) shall be given reasonable opportunity for participation in those  
45 meetings and (2) shall be entitled to the same access to the joint association's records as  
46 they are to the participating association's records.

47 (j) Nothing in this section shall be construed to create, expand, or reduce the authority  
48 of the board of directors of an association to impose monetary penalties on an association  
49 member for a violation of the governing documents or rules of the association.

1 Article 2. Common Interest Development Open Meeting Act

2 1363.05. (a) This section shall be known and may be cited as the Common Interest  
3 Development Open Meeting Act.

4 (b) Any member of the association may attend meetings of the board of directors of the  
5 association, except when the board adjourns to executive session to consider litigation,  
6 matters relating to the formation of contracts with third parties, member discipline, or  
7 personnel matters. The board of directors of the association shall meet in executive  
8 session, if requested by a member who may be subject to a fine, penalty, or other form of  
9 discipline, and the member shall be entitled to attend the executive session.

10 (c) Any matter discussed in executive session shall be generally noted in the minutes of  
11 the board of directors.

12 (d) The minutes, minutes proposed for adoption that are marked to indicate draft status,  
13 or a summary of the minutes, of any meeting of the board of directors of an association,  
14 other than an executive session, shall be available to members within 30 days of the  
15 meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any  
16 member of the association upon request and upon reimbursement of the association's  
17 costs for making that distribution.

18 (e) Members of the association shall be notified in writing at the time that the pro forma  
19 budget required in Section 1365 is distributed, or at the time of any general mailing to the  
20 entire membership of the association, of their right to have copies of the minutes of  
21 meetings of the board of directors, and how and where those minutes may be obtained.

22 (f) As used in this section, "meeting" includes any congregation of a majority of the  
23 members of the board at the same time and place to hear, discuss, or deliberate upon any  
24 item of business scheduled to be heard by the board, except those matters that may be  
25 discussed in executive session.

26 (g) Unless the time and place of meeting is fixed by the bylaws, or unless by bylaws  
27 provide for a longer period of notice, members shall be given notice of the time and place  
28 of a meeting as defined in subdivision (f), except for an emergency meeting, at least four  
29 days prior to the meeting. Notice may be given by posting the notice in a prominent place  
30 or places within the common area, by mail or delivery of the notice to each unit in the  
31 development, or by newsletter or similar means of communication.

32 (h) An emergency meeting of the board may be called by the president of the  
33 association, or by any two members of the governing body other than the president, if  
34 there are circumstances that could not have been reasonably foreseen which require  
35 immediate attention and possible action by the board, and which of necessity make it  
36 impracticable to provide notice as required by this section.

37 (i) The board of directors of the association shall permit any member of the association  
38 to speak at any meeting of the association or the board of directors, except for meetings  
39 of the board held in executive session. A reasonable time limit for all members of the  
40 association to speak to the board of directors or before a meeting of the association shall  
41 be established by the board of directors.

42 Article 3. Managing Agents

43 1363.1. (a) A prospective managing agent of a common interest development shall  
44 provide a written statement to the board of directors of the association of a common  
45 interest development as soon as practicable, but in no event more than 90 days, before  
46 entering into a management agreement which shall contain all of the following  
47 information concerning the managing agent:

1 (1) The names and business addresses of the owners or general partners of the  
2 managing agent. If the managing agent is a corporation, the written statement shall  
3 include the names and business addresses of the directors and officers and shareholders  
4 holding greater than 10 percent of the shares of the corporation.

5 (2) Whether or not any relevant licenses such as architectural design, construction,  
6 engineering, real estate, or accounting have been issued by this state and are currently  
7 held by the persons specified in paragraph (1). If a license is currently held by any of  
8 those persons, the statement shall contain the following information:

9 (A) What license is held.

10 (B) The dates the license is valid.

11 (C) The name of the licensee appearing on that license.

12 (3) Whether or not any relevant professional certifications or designations such as  
13 architectural design, construction, engineering, real property management, or accounting  
14 are currently held by any of the persons specified in paragraph (1), including, but not  
15 limited to, a professional common interest development manager. If any certification or  
16 designation is held, the statement shall include the following information:

17 (A) What the certification or designation is and what entity issued it.

18 (B) The dates the certification or designation is valid.

19 (C) The names in which the certification or designation is held.

20 (b) As used in this section, a “managing agent” is a person or entity who, for  
21 compensation or in expectation of compensation, exercises control over the assets of a  
22 common interest development. A “managing agent” does not include either of the  
23 following:

24 (1) A full-time employee of the association.

25 (2) Any regulated financial institution operating within the normal course of its  
26 regulated business practice.

27 1363.2. (a) A managing agent of a common interest development who accepts or  
28 receives funds belonging to the association shall deposit all such funds that are not placed  
29 into an escrow account with a bank, savings association, or credit union or into an  
30 account under the control of the association, into a trust fund account maintained by the  
31 managing agent in a bank, savings association, or credit union in this state. All funds  
32 deposited by the managing agent in the trust fund account shall be kept in this state in a  
33 financial institution, as defined in Section 31041 of the Financial Code, which is insured  
34 by the federal government, and shall be maintained there until disbursed in accordance  
35 with written instructions from the association entitled to the funds.

36 (b) At the written request of the board of directors of the association, the funds the  
37 managing agent accepts or receives on behalf of the association shall be deposited into an  
38 interest-bearing account in a bank, savings association, or credit union in this state,  
39 provided all of the following requirements are met:

40 (1) The account is in the name of the managing agent as trustee for the association or in  
41 the name of the association.

42 (2) All of the funds in the account are covered by insurance provided by an agency of  
43 the federal government.

44 (3) The funds in the account are kept separate, distinct, and apart from the funds  
45 belonging to the managing agent or to any other person or entity for whom the managing  
46 agent holds funds in trust except that the funds of various associations may be  
47 commingled as permitted pursuant to subdivision (d).

48 (4) The managing agent discloses to the board of directors of the association the nature  
49 of the account, how interest will be calculated and paid, whether service charges will be

1 paid to the depository and by whom, and any notice requirements or penalties for  
2 withdrawal of funds from the account.

3 (5) No interest earned on funds in the account shall inure directly or indirectly to the  
4 benefit of the managing agent or his or her employees.

5 (c) The managing agent shall maintain a separate record of the receipt and disposition  
6 of all funds described in this section, including any interest earned on the funds.

7 (d) The managing agent shall not commingle the funds of the association with his or  
8 her own money or with the money of others that he or she receives or accepts, unless all  
9 of the following requirements are met:

10 (1) The managing agent commingled the funds of various associations on or before  
11 February 26, 1990, and has obtained a written agreement with the board of directors of  
12 each association that he or she will maintain a fidelity and surety bond in an amount that  
13 provides adequate protection to the associations as agreed upon by the managing agent  
14 and the board of directors of each association.

15 (2) The managing agent discloses in the written agreement whether he or she is  
16 deriving benefits from the commingled account or the bank, credit union, or savings  
17 institution where the moneys will be on deposit.

18 (3) The written agreement provided pursuant to this subdivision includes, but is not  
19 limited to, the name and address of the bonding companies, the amount of the bonds, and  
20 the expiration dates of the bonds.

21 (4) If there are any changes in the bond coverage or the companies providing the  
22 coverage, the managing agent discloses that fact to the board of directors of each affected  
23 association as soon as practical, but in no event more than 10 days after the change.

24 (5) The bonds assure the protection of the association and provide the association at  
25 least 10 days' notice prior to cancellation.

26 (6) Completed payments on the behalf of the association are deposited within 24 hours  
27 or the next business day and do not remain commingled for more than 10 calendar days.

28 (e) The prevailing party in an action to enforce this section shall be entitled to recover  
29 reasonable legal fees and court costs.

30 (f) As used in this section, a "managing agent" is a person or entity, who for  
31 compensation or, in expectation of compensation, exercises control over the assets of the  
32 association. However, a "managing agent" does not include a full-time employee of the  
33 association or a regulated financial institution operating within the normal course of  
34 business, or an attorney at law acting within the scope of his or her license.

35 (g) As used in this section, "completed payment" means funds received which clearly  
36 identify the account to which the funds are to be credited.

#### 37 Article 4. Public Information

38 1363.5. (a) The articles of incorporation of any common interest development  
39 association filed with the Secretary of State on or after January 1, 1995, shall include a  
40 statement that shall be in addition to the statement of purposes of the corporation, and  
41 that (1) identifies the corporation as an association formed to manage a common interest  
42 development under the Davis- Stirling Common Interest Development Act, (2) states the  
43 business or corporate office of the association, if any, and, if the office is not on the site  
44 of the common interest development, states the nine-digit ZIP Code, front street, and  
45 nearest cross street for the physical location of the common interest development, and (3)  
46 states the name and address of the association's managing agent, as defined in Section  
47 1363.1, if any.

1 (b) The statement of principal business activity contained in the annual statement filed  
2 by an incorporated association with the Secretary of State pursuant to Section 1502 of the  
3 Corporations Code shall also contain the statement specified in subdivision (a).

4 1363.6. (a) In order to facilitate the collection of regular assessments, special  
5 assessments, transfer fees, and similar charges, the board of directors of any association is  
6 authorized to record a statement or amended statement identifying relevant information  
7 for the association. This statement may include any or all of the following information:

8 (1) The name of the association as shown in the conditions, covenants, and restrictions  
9 or the current name of the association, if different.

10 (2) The name and address of a managing agent or treasurer of the association or other  
11 individual or entity authorized to receive assessments and fees imposed by the  
12 association.

13 (3) A daytime telephone number of the authorized party identified in paragraph (2) if a  
14 telephone number is available.

15 (4) A list of separate interests subject to assessment by the association, showing the  
16 assessor's parcel number or legal description, or both, of the separate interests.

17 (5) The recording information identifying the declaration or declarations of covenants,  
18 conditions, and restrictions governing the association.

19 (6) If an amended statement is being recorded, the recording information identifying  
20 the prior statement or statements which the amendment is superseding.

21 (b) The county recorder is authorized to charge a fee for recording the document  
22 described in subdivision (a), which fee shall be based upon the number of pages in the  
23 document and the recorder's per-page recording fee.

24 CHAPTER 5. OPERATIONS

25 Article 1. Common Areas

26 1364. (a) Unless otherwise provided in the declaration of a common interest  
27 development, the association is responsible for repairing, replacing, or maintaining the  
28 common areas, other than exclusive use common areas, and the owner of each separate  
29 interest is responsible for maintaining that separate interest and any exclusive use  
30 common area appurtenant to the separate interest.

31 (b)(1) In a community apartment project, condominium project, or stock cooperative, as  
32 defined in Section 1351, unless otherwise provided in the declaration, the association is  
33 responsible for the repair and maintenance of the common area occasioned by the  
34 presence of wood-destroying pests or organisms.

35 (2) In a planned development as defined in Section 1351, unless a different  
36 maintenance scheme is provided in the declaration, each owner of a separate interest is  
37 responsible for the repair and maintenance of that separate interest as may be occasioned  
38 by the presence of wood-destroying pests or organisms. Upon approval of the majority of  
39 all members of the association, the responsibility for such repair and maintenance may be  
40 delegated to the association, which shall be entitled to recover the cost thereof as a special  
41 assessment.

42 (c) The costs of temporary relocation during the repair and maintenance of the areas  
43 within the responsibility of the association shall be borne by the owner of the separate  
44 interest affected.

1 (d)(1) The association may cause the temporary, summary removal of any occupant of  
2 a common interest development for such periods and at such times as may be necessary  
3 for prompt, effective treatment of wood-destroying pests or organisms.

4 (2) The association shall give notice of the need to temporarily vacate a separate  
5 interest to the occupants and to the owners, not less than 15 days nor more than 30 days  
6 prior to the date of the temporary relocation. The notice shall state the reason for the  
7 temporary relocation, the date and time of the beginning of treatment, the anticipated date  
8 and time of termination of treatment, and that the occupants will be responsible for their  
9 own accommodations during the temporary relocation.

10 (3) Notice by the association shall be deemed complete upon either:

11 (A) Personal delivery of a copy of the notice to the occupants, and sending a copy of  
12 the notice to the owners, if different than the occupants, by first- class mail, postage  
13 prepaid at the most current address shown on the books of the association.

14 (B) By sending a copy of the notice to the occupants at the separate interest address and  
15 a copy of the notice to the owners, if different than the occupants, by first-class mail,  
16 postage prepaid, at the most current address shown on the books of the association.

17 (e) For purposes of this section, “occupant” means an owner, resident, guest, invitee,  
18 tenant, lessee, sublessee, or other person in possession on the separate interest.

19 (f) Notwithstanding the provisions of the declaration, the owner of a separate interest is  
20 entitled to reasonable access to the common areas for the purpose of maintaining the  
21 internal and external telephone wiring made part of the exclusive use common areas of a  
22 separate interest pursuant to paragraph (2) of subdivision (i) of Section 1351. The access  
23 shall be subject to the consent of the association, whose approval shall not be  
24 unreasonably withheld, and which may include the association’s approval of telephone  
25 wiring upon the exterior of the common areas, and other conditions as the association  
26 determines reasonable.

## 27 Article 2. Fiscal Matters

28 1365. Unless the governing documents impose more stringent standards, the  
29 association shall prepare and distribute to all of its members the following documents:

30 (a) A pro forma operating budget, which shall include all of the following:

31 (1) The estimated revenue and expenses on an accrual basis.

32 (2) A summary of the association’s reserves based upon the most recent review or study  
33 conducted pursuant to Section 1365.5, which shall be printed in bold type and include all  
34 of the following:

35 (A) The current estimated replacement cost, estimated remaining life, and estimated  
36 useful life of each major component.

37 (B) As of the end of the fiscal year for which the study is prepared:

38 (i) The current estimate of the amount of cash reserves necessary to repair, replace,  
39 restore, or maintain the major components.

40 (ii) The current amount of accumulated cash reserves actually set aside to repair,  
41 replace, restore, or maintain major components.

42 (iii) If applicable, the amount of funds received from either a compensatory damage  
43 award or settlement to an association from any person or entity for injuries to property,  
44 real or personal, arising out of any construction or design defects, and the expenditure or  
45 disposition of funds, including the amounts expended for the direct and indirect costs of  
46 repair of construction or design defects. These amounts shall be reported at the end of the  
47 fiscal year for which the study is prepared as separate line items under cash reserves

1 pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause,  
2 an association that is obligated to issue a review of their financial statement pursuant to  
3 subdivision (b) may include in the review a statement containing all of the information  
4 required by this clause.

5 (C) The percentage that the amount determined for purposes of clause (ii) subparagraph  
6 (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

7 (3) A statement as to whether the board of directors of the association has determined  
8 or anticipates that the levy of one or more special assessments will be required to repair,  
9 replace, or restore any major component or to provide adequate reserves therefor.

10 (4) A general statement addressing the procedures used for the calculation and  
11 establishment of those reserves to defray the future repair, replacement, or additions to  
12 those major components that the association is obligated to maintain.

13 The summary of the association's reserves disclosed pursuant to paragraph (2) shall not  
14 be admissible in evidence to show improper financial management of an association,  
15 provided that other relevant and competent evidence of the financial condition of the  
16 association is not made inadmissible by this provision.

17 A copy of the operating budget shall be annually distributed not less than 45 days nor  
18 more than 60 days prior to the beginning of the association's fiscal year.

19 (b) A review of the financial statement of the association shall be prepared in  
20 accordance with generally accepted accounting principles by a licensee of the California  
21 Board of Accountancy for any fiscal year in which the gross income to the association  
22 exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial  
23 statement shall be distributed within 120 days after the close of each fiscal year.

24 (c) In lieu of the distribution of the pro forma operating budget required by subdivision  
25 (a), the board of directors may elect to distribute a summary of the pro forma operating  
26 budget to all of its members with a written notice that the pro forma operating budget is  
27 available at the business office of the association or at another suitable location within the  
28 boundaries of the development, and that copies will be provided upon request and at the  
29 expense of the association. If any member requests that a copy of the pro forma operating  
30 budget required by subdivision (a) be mailed to the member, the association shall provide  
31 the copy to the member by first-class United States mail at the expense of the association  
32 and delivered within five days. The written notice that is distributed to each of the  
33 association members shall be in at least 10-point boldface type on the front page of the  
34 summary of the budget.

35 (d) A statement describing the association's policies and practices in enforcing lien  
36 rights or other legal remedies for default in payment of its assessments against its  
37 members shall be annually delivered to the members during the 60-day period  
38 immediately preceding the beginning of the association's fiscal year.

39 (e)(1) A summary of the association's property, general liability, and earthquake and  
40 flood insurance policies, which shall be distributed within 60 days preceding the  
41 beginning of the association's fiscal year, that includes all of the following information  
42 about each policy:

43 (A) The name of the insurer.

44 (B) The type of insurance.

45 (C) The policy limits of the insurance.

46 (D) The amount of deductibles, if any.

47 (2) The association shall, as soon as reasonably practicable, notify its members by first-  
48 class mail if any of the policies described in paragraph (1) have lapsed, been canceled,  
49 and are not immediately renewed, restored, or replaced, or if there is a significant change,



1 such as a reduction in coverage or limits or an increase in the deductible, as to any of  
2 those policies. If the association receives any notice of nonrenewal of a policy described  
3 in paragraph (1), the association shall immediately notify its members if replacement  
4 coverage will not be in effect by the date the existing coverage will lapse.

5 (3) To the extent that any of the information required to be disclosed pursuant to  
6 paragraph (1) is specified in the insurance policy declaration page, the association may  
7 meet its obligation to disclose that information by making copies of that page and  
8 distributing it to all of its members.

9 (4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point  
10 boldface type, the following statement: "This summary of the association's policies of  
11 insurance provides only certain information, as required by subdivision (e) of Section  
12 1365 of the Civil Code, and should not be considered a substitute for the complete policy  
13 terms and conditions contained in the actual policies of insurance. Any association  
14 member may, upon request and provision of reasonable notice, review the association's  
15 insurance policies and, upon request and payment of reasonable duplication charges,  
16 obtain copies of those policies. Although the association maintains the policies of  
17 insurance specified in this summary, the association's policies of insurance may not cover  
18 your property, including personal property or, real property improvements to or around  
19 your dwelling, or personal injuries or other losses that occur within or around your  
20 dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or  
21 a portion of any deductible that applies. Association members should consult with their  
22 individual insurance broker or agent for appropriate additional coverage."

23 1365.5. (a) Unless the governing documents impose more stringent standards, the board  
24 of directors of the association shall do all of the following:

25 (1) Review a current reconciliation of the association's operating accounts on at least a  
26 quarterly basis.

27 (2) Review a current reconciliation of the association's reserve accounts on at least a  
28 quarterly basis.

29 (3) Review, on at least a quarterly basis, the current year's actual reserve revenues and  
30 expenses compared to the current year's budget.

31 (4) Review the latest account statements prepared by the financial institutions where the  
32 association has its operating and reserve accounts.

33 (5) Review an income and expense statement for the association's operating and  
34 reserve accounts on at least a quarterly basis.

35 (b) The signatures of at least two persons, who shall be members of the association's  
36 board of directors, or one officer who is not a member of the board of directors and a  
37 member of the board of directors, shall be required for the withdrawal of moneys from  
38 the association's reserve accounts.

39 (c)(1) The board of directors shall not expend funds designated as reserve funds for any  
40 purpose other than the repair, restoration, replacement, or maintenance of, or litigation  
41 involving the repair, restoration, replacement, or maintenance of, major components  
42 which the association is obligated to repair, restore, replace, or maintain and for which  
43 the reserve fund was established.

44 (2) However, the board may authorize the temporary transfer of money from a reserve  
45 fund to the association's general operating fund to meet short-term cash-flow  
46 requirements or other expenses, provided the board has made a written finding, recorded  
47 in the board's minutes, explaining the reasons that the transfer is needed, and describing  
48 when and how the money will be repaid to the reserve fund. The transferred funds shall  
49 be restored to the reserve fund within one year of the date of the initial transfer, except

1 that the board may, upon making a finding supported by documentation that a temporary  
2 delay would be in the best interests of the common interest development, temporarily  
3 delay the restoration. The board shall exercise prudent fiscal management in maintaining  
4 the integrity of the reserve account, and shall, if necessary, levy a special assessment to  
5 recover the full amount of the expended funds within the time limits required by this  
6 section. This special assessment is subject to the limitation imposed by Section 1366. The  
7 board may, at its discretion, extend the date the payment on the special assessment is due.  
8 Any extension shall not prevent the board from pursuing any legal remedy to enforce the  
9 collection of an unpaid special assessment.

10 (d) When the decision is made to use reserve funds or to temporarily transfer money  
11 from the reserve fund to pay for litigation, the association shall notify the members of the  
12 association of that decision in the next available mailing to all members pursuant to  
13 Section 5016 of the Corporations Code, and of the availability of an accounting of those  
14 expenses. Unless the governing documents impose more stringent standards, the  
15 association shall make an accounting of expenses related to the litigation on at least a  
16 quarterly basis. The accounting shall be made available for inspection by members of the  
17 association at the association's office.

18 (e) At least once every three years the board of directors shall cause to be conducted a  
19 reasonably competent and diligent visual inspection of the accessible areas of the major  
20 components which the association is obligated to repair, replace, restore, or maintain as  
21 part of a study of the reserve account requirements of the common interest development if  
22 the current replacement value of the major components is equal to or greater than one-  
23 half of the gross budget of the association which excludes the association's reserve  
24 account for that period. The board shall review this study annually and shall consider and  
25 implement necessary adjustments to the board's analysis of the reserve account  
26 requirements as a result of that review.

27 The study required by this subdivision shall at a minimum include:

28 (1) Identification of the major components which the association is obligated to repair,  
29 replace, restore, or maintain which, as of the date of the study, have a remaining useful  
30 life of less than 30 years.

31 (2) Identification of the probable remaining useful life of the components identified in  
32 paragraph (1) as of the date of the study.

33 (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the  
34 components identified in paragraph (1) during and at the end of their useful life.

35 (4) An estimate of the total annual contribution necessary to defray the cost to repair,  
36 replace, restore, or maintain the components identified in paragraph (1) during and at the  
37 end of their useful life, after subtracting total reserve funds as of the date of the study.

38 (f) As used in this section, "reserve accounts" means both of the following:

39 (1) Moneys that the association's board of directors has identified for use to defray the  
40 future repair or replacement of, or additions to, those major components which the  
41 association is obligated to maintain.

42 (2) The funds received and not yet expended or disposed from either a compensatory  
43 damage award or settlement to an association from any person or entity for injuries to  
44 property, real or personal, arising from any construction or design defects. These funds  
45 shall be separately itemized from funds described in paragraph (1).

46 (g) As used in this section, "reserve account requirements" means the estimated funds  
47 which the association's board of directors has determined are required to be available at a  
48 specified point in time to repair, replace, or restore those major components which the  
49 association is obligated to maintain.

1 (h) This section does not apply to an association that does not have a “common area” as  
2 defined in Section 1351.

3 Article 3. Insurance

4 1365.7. (a) A volunteer officer or volunteer director of an association, as defined in  
5 subdivision (a) of Section 1351, which manages a common interest development that is  
6 exclusively residential, shall not be personally liable in excess of the coverage of  
7 insurance specified in paragraph (4) to any person who suffers injury, including, but not  
8 limited to, bodily injury, emotional distress, wrongful death, or property damage or loss  
9 as a result of the tortious act or omission of the volunteer officer or volunteer director if  
10 all of the following criteria are met:

11 (1) The act or omission was performed within the scope of the officer’s or director’s  
12 association duties.

13 (2) The act or omission was performed in good faith.

14 (3) The act or omission was not willful, wanton, or grossly negligent.

15 (4) The association maintained and had in effect at the time the act or omission  
16 occurred and at the time a claim is made one or more policies of insurance which shall  
17 include coverage for (A) general liability of the association and (B) individual liability of  
18 officers and directors of the association for negligent acts or omissions in that capacity;  
19 provided, that both types of coverage are in the following minimum amount:

20 (A) At least five hundred thousand dollars (\$500,000) if the common interest  
21 development consists of 100 or fewer separate interests.

22 (B) At least one million dollars (\$1,000,000) if the common interest development  
23 consists of more than 100 separate interests.

24 (b) The payment of actual expenses incurred by a director or officer in the execution of  
25 the duties of that position does not affect the director’s or officer’s status as a volunteer  
26 within the meaning of this section.

27 (c) An officer or director who at the time of the act or omission was a declarant, as  
28 defined in subdivision (g) of Section 1351, or who received either direct or indirect  
29 compensation as an employee from the declarant, or from a financial institution that  
30 purchased a separate interest, as defined in subdivision (l) of Section 1351, at a judicial or  
31 nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer  
32 for the purposes of this section.

33 (d) Nothing in this section shall be construed to limit the liability of the association for  
34 its negligent act or omission or for any negligent act or omission of an officer or director  
35 of the association.

36 (e) This section shall only apply to a volunteer officer or director who is a tenant of a  
37 separate interest in the common interest development or is an owner of no more than two  
38 separate interests in the common interest development.

39 (f)(1) For purposes of paragraph (1) of subdivision (a), the scope of the officer’s or  
40 director’s association duties shall include, but shall not be limited to, both of the  
41 following decisions:

42 (A) Whether to conduct an investigation of the common interest development for latent  
43 deficiencies prior to the expiration of the applicable statute of limitations.

44 (B) Whether to commence a civil action against the builder for defects in design or  
45 construction.

46 (2) It is the intent of the Legislature that this section clarify the scope of association  
47 duties to which the protections against personal liability in this section apply. It is not the

1 intent of the Legislature that these clarifications be construed to expand, or limit, the  
2 fiduciary duties owed by the directors or officers.

3 1365.9. (a) It is the intent of the Legislature to offer civil liability protection to owners  
4 of the separate interests in a common interest development that have common areas  
5 owned in tenancy-in-common if the association carries a certain level of prescribed  
6 insurance that covers a cause of action in tort.

7 (b) Any cause of action in tort against any owner of a separate interest arising solely by  
8 reason of an ownership interest as a tenant in common in the common area of a common  
9 interest development shall be brought only against the association and not against the  
10 individual owners of the separate interests, as defined in subdivision (I) of Section 1351,  
11 if both of the insurance requirements in paragraphs (1) and (2) are met:

12 (1) The association maintained and has in effect for this cause of action, one or more  
13 policies of insurance which include coverage for general liability of the association.

14 (2) The coverage described in paragraph (1) is in the following minimum amounts:

15 (A) At least two million dollars (\$2,000,000) if the common interest development  
16 consists of 100 or fewer separate interests.

17 (B) At least three million dollars (\$3,000,000) if the common interest development  
18 consists of more than 100 separate interests.

#### 19 Article 4. Assessments

20 1366. (a) Except as provided in this section, the association shall levy regular and  
21 special assessments sufficient to perform its obligations under the governing documents  
22 and this title. However, annual increases in regular assessments for any fiscal year, as  
23 authorized by subdivision (b), shall not be imposed unless the board has complied with  
24 subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the  
25 approval of owners, constituting a quorum, casting a majority of the votes at a meeting or  
26 election of the association conducted in accordance with Chapter 5 (commencing with  
27 Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section  
28 7613 of the Corporations Code. For the purposes of this section, “quorum” means more  
29 than 50 percent of the owners of an association.

30 (b) Notwithstanding more restrictive limitations placed on the board by the governing  
31 documents, the board of directors may not impose a regular assessment that is more than  
32 20 percent greater than the regular assessment for the association’s preceding fiscal year  
33 or impose special assessments which in the aggregate exceed 5 percent of the budgeted  
34 gross expenses of the association for that fiscal year without the approval of owners,  
35 constituting a quorum, casting a majority of the votes at a meeting or election of the  
36 association conducted in accordance with Chapter 5 (commencing with Section 7510) of  
37 Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the  
38 Corporations Code. For the purposes of this section, quorum means more than 50 percent  
39 of the owners of an association. This section does not limit assessment increases  
40 necessary for emergency situations. For purposes of this section, an emergency situation  
41 is any one of the following:

42 (1) An extraordinary expense required by an order of a court.

43 (2) An extraordinary expense necessary to repair or maintain the common interest  
44 development or any part of it for which the association is responsible where a threat to  
45 personal safety on the property is discovered.

46 (3) An extraordinary expense necessary to repair or maintain the common interest  
47 development or any part of it for which the association is responsible that could not have

1 been reasonably foreseen by the board in preparing and distributing the pro forma  
2 operating budget under Section 1365 . However, prior to the imposition or collection of  
3 an assessment under this subdivision, the board shall pass a resolution containing written  
4 findings as to the necessity of the extraordinary expense involved and why the expense  
5 was not or could not have been reasonably foreseen in the budgeting process, and the  
6 resolution shall be distributed to the members with the notice of assessment.

7 (c) Regular assessments imposed or collected to perform the obligations of an  
8 association under the governing documents or this title shall be exempt from execution by  
9 a judgment creditor of the association only to the extent necessary for the association to  
10 perform essential services, such as paying for utilities and insurance. In determining the  
11 appropriateness of an exemption, a court shall ensure that only essential services are  
12 protected under this subdivision.

13 This exemption shall not apply to any consensual pledges, liens, or encumbrances that  
14 have been approved by the owners of an association, constituting a quorum, casting a  
15 majority of the votes at a meeting or election of the association, or to any state tax lien, or  
16 to any lien for labor or materials supplied to the common area.

17 (d) The association shall provide notice by first-class mail to the owners of the separate  
18 interests of any increase in the regular or special assessments of the association, not less  
19 than 30 nor more than 60 days prior to the increased assessment becoming due.

20 (e) Regular and special assessments levied pursuant to the governing documents are  
21 delinquent 15 days after they become due. If an assessment is delinquent the association  
22 may recover all of the following:

23 (1) Reasonable costs incurred in collecting the delinquent assessment, including  
24 reasonable attorney's fees.

25 (2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars  
26 (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller  
27 amount, in which case any late charge imposed shall not exceed the amount specified in  
28 the declaration.

29 (3) Interest on all sums imposed in accordance with this section, including the  
30 delinquent assessment, reasonable costs of collection, and late charges, at an annual  
31 percentage rate not to exceed 12 percent interest, commencing 30 days after the  
32 assessment becomes due.

33 (f) Associations are hereby exempted from interest-rate limitations imposed by Article  
34 XV of the California Constitution, subject to the limitations of this section.

35 1366.1. An association shall not impose or collect an assessment or fee that exceeds the  
36 amount necessary to defray the costs for which it is levied.

37 1366.3. (a) The exception for disputes related to association assessments in subdivision  
38 (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate  
39 interest and the association regarding the assessments imposed by the association, the  
40 owner of the separate interest chooses to pay in full to the association all of the charges  
41 listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is  
42 paid under protest, and the written notice is mailed by certified mail not more than 30  
43 days from the recording of a notice of delinquent assessment in accordance with Section  
44 1367; and in those instances, the association shall inform the owner that the owner may  
45 resolve the dispute through alternative dispute resolution as set forth in Section 1354,  
46 civil action, and any other procedures to resolve the dispute that may be available through  
47 the association.

48 (1) The amount of the assessment in dispute.

1 (2) Late charges.

2 (3) Interest.

3 (4) All fees and costs associated with the preparation and filing of a notice of  
4 delinquent assessment, including all mailing costs, and including attorney's fees not to  
5 exceed four hundred twenty-five dollars (\$425).

6 (b) The right of any owner of a separate interest to utilize alternative dispute resolution  
7 under this section may not be exercised more than two times in any single calendar year,  
8 and not more than three times within any five calendar years. Nothing within this section  
9 shall preclude any owner of a separate interest and the association, upon mutual  
10 agreement, from entering into alternative dispute resolution for a number of times in  
11 excess of the limits set forth in this section. The owner of a separate interest may request  
12 and be awarded through alternative dispute resolution reasonable interest to be paid by  
13 the association on the total amount paid under paragraphs (1) to (4), inclusive, of  
14 subdivision (a), if it is determined through alternative dispute resolution that the  
15 assessment levied by the association was not correctly levied.

16 1367. (a) A regular or special assessment and any late charges, reasonable costs of  
17 collection, and interest, as assessed in accordance with Section 1366, shall be a debt of  
18 the owner of the separate interest at the time the assessment or other sums are levied.  
19 Before an association may place a lien upon the separate interest of an owner to collect a  
20 debt which is past due under this subdivision, the association shall notify the owner in  
21 writing by certified mail of the fee and penalty procedures of the association, provide an  
22 itemized statement of the charges owed by the owner, including items on the statement  
23 which indicate the principal owed, any late charges and the method of calculation, any  
24 attorney's fees, and the collection practices used by the association, including the right of  
25 the association to the reasonable costs of collection. In addition, any payments toward  
26 such a debt shall first be applied to the principal owed, and only after the principal owed  
27 is paid in full shall such payments be applied to interest or collection expenses.

28 (b) The amount of the assessment, plus any costs of collection, late charges, and  
29 interest assessed in accordance with Section 1366, shall be a lien on the owner's interest  
30 in the common interest development from and after the time the association causes to be  
31 recorded with the county recorder of the county in which the separate interest is located, a  
32 notice of delinquent assessment, which shall state the amount of the assessment and other  
33 sums imposed in accordance with Section 1366, a legal description of the owner's  
34 interest in the common interest development against which the assessment and other  
35 sums are levied, the name of the record owner of the owner's interest in the common  
36 interest development against which the lien is imposed, and, in order for the lien to be  
37 enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address  
38 of the trustee authorized by the association to enforce the lien by sale. The notice of  
39 delinquent assessment shall be signed by the person designated in the declaration or by  
40 the association for that purpose, or if no one is designated, by the president of the  
41 association, and mailed in the manner set forth in Section 2924b, to all record owners of  
42 the owner's interest in the common interest development no later than 10 calendar days  
43 after recordation. Upon payment of the sums specified in the notice of delinquent  
44 assessment, the association shall cause to be recorded a further notice stating the  
45 satisfaction and release of the lien thereof. A monetary penalty imposed by the  
46 association as a means of reimbursing the association for costs incurred by the association  
47 in the repair of damage to common areas and facilities for which the member or the  
48 member's guests or tenants were responsible may become a lien against the member's  
49 separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and

1 2924c, provided the authority to impose a lien is set forth in the governing documents. It  
2 is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the  
3 California Code of Regulations, as that section appeared on January 1, 1996, for  
4 associations of subdivisions that are being sold under authority of a subdivision public  
5 report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business  
6 and Professions Code.

7 (c) Except as indicated in subdivision (b), a monetary penalty imposed by the  
8 association as a disciplinary measure for failure of a member to comply with the  
9 governing instruments, except for the late payments, may not be characterized nor treated  
10 in the governing instruments as an assessment which may become a lien against the  
11 member's subdivision interest enforceable by the sale of the interest under Sections 2924,  
12 2924b, and 2924c.

13 (d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded  
14 subsequent to the notice of assessment, except that the declaration may provide for the  
15 subordination thereof to any other liens and encumbrances.

16 (e) After the expiration of 30 days following the recording of a lien created pursuant to  
17 subdivision (b), the lien may be enforced in any manner permitted by law, including sale  
18 by the court, sale by the trustee designated in the notice of delinquent assessment, or sale  
19 by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be  
20 conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c  
21 applicable to the exercise of powers of sale in mortgages and deeds of trusts.

22 (f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil  
23 Procedure prohibits actions against the owner of a separate interest to recover sums for  
24 which a lien is created pursuant to this section or prohibits an association from taking a  
25 deed in lieu of foreclosure.

26 (g) This section only applies to liens recorded on or after January 1, 1986.

## 27 CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

28 1368. (a) The owner of a separate interest, other than an owner subject to the  
29 requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as  
30 practicable before transfer of title to the separate interest or execution of a real property  
31 sales contract therefor, as defined in Section 2985, provide the following to the  
32 prospective purchaser:

33 (1) A copy of the governing documents of the common interest development.

34 (2) If there is a restriction in the governing documents limiting the occupancy,  
35 residency, or use of a separate interest on the basis of age in a manner different from that  
36 provided in Section 51.3, a statement that the restriction is only enforceable to the extent  
37 permitted by Section 51.3 and a statement specifying the applicable provisions of Section  
38 51.3.

39 (3) A copy of the most recent documents distributed pursuant to Section 1365.

40 (4) A true statement in writing obtained from an authorized representative of the  
41 association as to the amount of the association's current regular and special assessments  
42 and fees, any assessments levied upon the owner's interest in the common interest  
43 development that are unpaid on the date of the statement, and any monetary fines or  
44 penalties levied upon the owner's interest and unpaid on the date of the statement. The  
45 statement obtained from an authorized representative shall also include true information  
46 on late charges, interest, and costs of collection which, as of the date of the statement, are

1 or may be made a lien upon the owner's interest in a common interest development  
2 pursuant to Section 1367.

3 (5) A copy or a summary of any notice previously sent to the owner pursuant to  
4 subdivision (h) of Section 1363 that sets forth any alleged violation of the governing  
5 documents that remains unresolved at the time of the request. The notice shall not be  
6 deemed a waiver of the association's right to enforce the governing documents against  
7 the owner or the prospective purchaser of the separate interest with respect to any  
8 violation. This paragraph shall not be construed to require an association to inspect an  
9 owner's separate interest.

10 (6) A copy of the preliminary list of defects provided to each member of the association  
11 pursuant to Section 1375, unless the association and the builder subsequently enter into a  
12 settlement agreement or otherwise resolve the matter and the association complies with  
13 Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph  
14 shall not waive any privilege attached to the document. The preliminary list of defects  
15 shall also include a statement that a final determination as to whether the list of defects is  
16 accurate and complete has not been made.

17 (7) A copy of the latest information provided for in Section 1375.1.

18 (8) Any change in the association's current regular and special assessments and fees  
19 which have been approved by the association's board of directors, but have not become  
20 due and payable as of the date disclosure is provided pursuant to this subdivision.

21 (b) Upon written request, an association shall, within 10 days of the mailing or delivery  
22 of the request, provide the owner of a separate interest with a copy of the requested items  
23 specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may  
24 charge a fee for this service, which shall not exceed the association's reasonable cost to  
25 prepare and reproduce the requested items.

26 (c) An association shall not impose or collect any assessment, penalty, or fee in  
27 connection with a transfer of title or any other interest except the association's actual  
28 costs to change its records and that authorized by subdivision (b).

29 (d) Any person or entity who willfully violates this section shall be liable to the  
30 purchaser of a separate interest which is subject to this section for actual damages  
31 occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed  
32 five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall  
33 be awarded reasonable attorneys' fees.

34 (e) Nothing in this section affects the validity of title to real property transferred in  
35 violation of this section.

36 (f) In addition to the requirements of this section, an owner transferring title to a  
37 separate interest shall comply with applicable requirements of Sections 1133 and 1134.

## 38 CHAPTER 7. CIVIL ACTIONS AND LIENS

39 1368.4. (a) Not later than 30 days prior to the filing of any civil action by the  
40 association against the declarant or other developer of a common interest development for  
41 alleged damage to the common areas, alleged damage to the separate interests that the  
42 association is obligated to maintain or repair, or alleged damage to the separate interests  
43 that arises out of, or is integrally related to, damage to the common areas or separate  
44 interests that the association is obligated to maintain or repair, the board of directors of  
45 the association shall provide written notice to each member of the association who  
46 appears on the records of the association when the notice is provided. This notice shall  
47 specify all of the following:



1 (1) That a meeting will take place to discuss problems that may lead to the filing of a  
2 civil action.

3 (2) The options, including civil actions, that are available to address the problems.

4 (3) The time and place of this meeting.

5 (b) Notwithstanding subdivision (a), if the association has reason to believe that the  
6 applicable statute of limitations will expire before the association files the civil action, the  
7 association may give the notice, as described above, within 30 days after the filing of the  
8 action.

9 1369. In a condominium project, no labor performed or services or materials furnished  
10 with the consent of, or at the request of, an owner in the condominium project or his or  
11 her agent or his or her contractor shall be the basis for the filing of a lien against any  
12 other property of any other owner in the condominium project unless that other owner has  
13 expressly consented to or requested the performance of the labor or furnishing of the  
14 materials or services. However, express consent shall be deemed to have been given by  
15 the owner of any condominium in the case of emergency repairs thereto. Labor performed  
16 or services or materials furnished for the common areas, if duly authorized by the  
17 association, shall be deemed to be performed or furnished with the express consent of  
18 each condominium owner. The owner of any condominium may remove his or her  
19 condominium from a lien against two or more condominiums or any part thereof by  
20 payment to the holder of the lien of the fraction of the total sum secured by the lien which  
21 is attributable to his or her condominium.

## 22 CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

23 1370. Any deed, declaration, or condominium plan for a common interest development  
24 shall be liberally construed to facilitate the operation of the common interest  
25 development, and its provisions shall be presumed to be independent and severable.  
26 Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of  
27 this division shall operate to invalidate any provisions of the governing documents of a  
28 common interest development.

29 1371. In interpreting deeds and condominium plans, the existing physical boundaries of  
30 a unit in a condominium project, when the boundaries of the unit are contained within a  
31 building, or of a unit reconstructed in substantial accordance with the original plans  
32 thereof, shall be conclusively presumed to be its boundaries rather than the metes and  
33 bounds expressed in the deed or condominium plan, if any exists, regardless of settling or  
34 lateral movement of the building and regardless of minor variance between boundaries  
35 shown on the plan or in the deed and those of the building.

36 1372. Unless a contrary intent is clearly expressed, local zoning ordinances shall be  
37 construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless  
38 of whether the common interest development is a community apartment project,  
39 condominium project, planned development, or stock cooperative.

40 1373. Sections 1356, 1365, 1365.5, 1366.1, and 1368, and subdivision (b) of Section  
41 1363, and subdivision (b) of Section 1366 are not applicable to common interest  
42 developments that are expressly zoned as industrial developments and limited in use to  
43 industrial purposes or expressly zoned as commercial developments and limited in use to  
44 commercial purposes.

1 The Legislature finds that those aforementioned provisions may be appropriate to  
2 protect purchasers in residential common interest developments, however, the provisions  
3 are not necessary to protect purchasers in commercial or industrial developments since  
4 the application of those provisions results in unnecessary burdens and costs for these  
5 types of developments.

6 1374. Nothing in this title may be construed to apply to a development wherein there  
7 does not exist a common area as defined in subdivision (b) of Section 1351, nor may this  
8 title be construed to confer standing pursuant to Section 383 of the Code of Civil  
9 Procedure to an association created for the purpose of managing a development wherein  
10 there does not exist a common area.

11 This section is declaratory of existing law.

## 12 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

13 1375. (a) Before an association files a complaint for damages against a builder,  
14 developer, or general contractor (“respondent”) of a common interest development based  
15 upon a claim for defects in the design or construction of the common interest  
16 development, all of the requirements of this section shall be satisfied with respect to the  
17 builder, developer, or general contractor.

18 (b) The association shall serve upon the respondent a “Notice of Commencement of  
19 Legal Proceeding.” The notice shall be served by certified mail to the registered agent of  
20 the respondent, or if there is no registered agent, then to any officer of the respondent. If  
21 there are no current officers of the respondent, service shall be upon the person or entity  
22 otherwise authorized by law to receive service of process. Service upon the general  
23 contractor shall be sufficient to initiate the process set forth in this section with regard to  
24 any builder or developer, if the builder or developer is not amenable to service of process  
25 by the foregoing methods. This notice shall toll all applicable statutes of limitation and  
26 repose, whether contractual or statutory, by and against all potentially responsible parties,  
27 regardless of whether they were named in the notice, including claims for indemnity  
28 applicable to the claim for the period set forth in subdivision (c). The notice shall include  
29 all of the following:

30 (1) The name and location of the project.

31 (2) An initial list of defects sufficient to apprise the respondent of the general nature of  
32 the defects at issue.

33 (3) A description of the results of the defects, if known.

34 (4) A summary of the results of a survey or questionnaire distributed to homeowners to  
35 determine the nature and extent of defects, if a survey has been conducted or a  
36 questionnaire has been distributed.

37 (5) Either a summary of the results of testing conducted to determine the nature and  
38 extent of defects or the actual test results, if that testing has been conducted.

39 (c) Service of the notice shall commence a period, not to exceed 180 days, during  
40 which the association, the respondent, and all other participating parties shall try to  
41 resolve the dispute through the processes set forth in this section. This 180-day period  
42 may be extended for one additional period, not to exceed 180 days, only upon the mutual  
43 agreement of the association, the respondent, and any parties not deemed peripheral  
44 pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension  
45 shall require the agreement of all participating parties. Unless extended, the dispute  
46 resolution process prescribed by this section shall be deemed completed. All extensions  
47 shall continue the tolling period described in subdivision (b).

1 (d) Within 25 days of the date the association serves the Notice of Commencement of  
2 Legal Proceedings, the respondent may request in writing to meet and confer with the  
3 board of directors of the association. Unless the respondent and the association otherwise  
4 agree, there shall be not more than one meeting, which shall take place no later than 10  
5 days from the date of the respondent's written request, at a mutually agreeable time and  
6 place. The meeting shall be subject to subdivision (b) of Section 1363.05. The  
7 discussions at the meeting are privileged communications and are not admissible in  
8 evidence in any civil action, unless the association and the respondent consent in writing  
9 to their admission.

10 (e) Upon receipt of the notice, the respondent shall, within 60 days, comply with the  
11 following:

12 (1) The respondent shall provide the association with access to, for inspection and  
13 copying of, all plans and specifications, subcontracts, and other construction files for the  
14 project that are reasonably calculated to lead to the discovery of admissible evidence  
15 regarding the defects claimed. The association shall provide the respondent with access  
16 to, for inspection and copying of, all files reasonably calculated to lead to the discovery  
17 of admissible evidence regarding the defects claimed, including all reserve studies,  
18 maintenance records and any survey questionnaires, or results of testing to determine the  
19 nature and extent of defects. To the extent any of the above documents are withheld based  
20 on privilege, a privilege log shall be prepared and submitted to all other parties. All other  
21 potentially responsible parties shall have the same rights as the respondent regarding the  
22 production of documents upon receipt of written notice of the claim, and shall produce all  
23 relevant documents within 60 days of receipt of the notice of the claim.

24 (2) The respondent shall provide written notice by certified mail to all subcontractors,  
25 design professionals, their insurers, and the insurers of any additional insured whose  
26 identities are known to the respondent or readily ascertainable by review of the project  
27 files or other similar sources and whose potential responsibility appears on the face of the  
28 notice. This notice to subcontractors, design professionals, and insurers shall include a  
29 copy of the Notice of Commencement of Legal Proceeding, and shall specify the date and  
30 manner by which the parties shall meet and confer to select a dispute resolution facilitator  
31 pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to  
32 participate in the meet and confer or serve a written acknowledgment of receipt regarding  
33 this notice, advise the recipient that it will waive any challenge to selection of the dispute  
34 resolution facilitator if it elects not to participate in the meet and confer, advise the  
35 recipient that it may be bound by any settlement reached pursuant to subdivision (d) of  
36 Section 1375.05, advise the recipient that it may be deemed to have waived rights to  
37 conduct inspection and testing pursuant to subdivision (c) of Section 1375.05, advise the  
38 recipient that it may seek the assistance of an attorney, and advise the recipient that it  
39 should contact its insurer, if any. Any subcontractor or design professional, or insurer for  
40 that subcontractor, design professional, or additional insured, who receives written notice  
41 from the respondent regarding the meet and confer shall, prior to the meet and confer,  
42 serve on the respondent a written acknowledgment of receipt. That subcontractor or  
43 design professional shall, within 10 days of service of the written acknowledgment of  
44 receipt, provide to the association and the respondent a Statement of Insurance that  
45 includes both of the following:

46 (A) The names, addresses, and contact persons, if known, of all insurance carriers,  
47 whether primary or excess and regardless of whether a deductible or self-insured  
48 retention applies, whose policies were in effect from the commencement of construction  
49 of the subject project to the present and which potentially cover the subject claims.

1 (B) The applicable policy numbers for each such policy of insurance.

2 (3) Any subcontractor or design professional, or insurer for that subcontractor, design  
3 professional, or additional insured, who so chooses, may, at any time, make a written  
4 request to the dispute resolution facility for designation as a peripheral party. That request  
5 shall be served contemporaneously on the association and the respondent. If no objection  
6 to that designation is received within 15 days, or upon rejection of that objection, the  
7 dispute resolution facilitator shall designate that subcontractor or design professional as a  
8 peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or  
9 design professional only to those dispute resolution sessions deemed peripheral party  
10 sessions or to those sessions during which the dispute resolution facilitator believes  
11 settlement as to peripheral parties may be finalized. Nothing in this subdivision shall  
12 preclude a party who has been designated a peripheral party from being reclassified as a  
13 nonperipheral party, nor shall this subdivision preclude a party designated as a  
14 nonperipheral party from being reclassified as a peripheral party after notice to all parties  
15 and an opportunity to object. For purposes of this subdivision, a peripheral party is a  
16 party having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

17 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e),  
18 the association, respondent, subcontractors, design professionals, and their insurers who  
19 have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and  
20 confer in an effort to select a dispute resolution facilitator to preside over the mandatory  
21 dispute resolution process prescribed by this section. Any subcontractor or design  
22 professional who has been given timely notice of this meeting but who does not  
23 participate, waives any challenge he or she may have as to the selection of the dispute  
24 resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve  
25 the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently  
26 knowledgeable in the subject matter and be able to devote sufficient time to the case. The  
27 dispute resolution facilitator shall not be required to reside in or have an office in the  
28 county in which the project is located. The dispute resolution facilitator and the  
29 participating parties shall agree to a date, time, and location to hold a case management  
30 meeting of all parties and the dispute resolution facilitator, to discuss the claims being  
31 asserted and the scheduling of events under this section. The case management meeting  
32 with the dispute resolution facilitator shall be held within 100 days of service of the  
33 Notice of Commencement of Legal Proceedings at a location in the county where the  
34 project is located. Written notice of the case management meeting with the dispute  
35 resolution facilitator shall be sent by the respondent to the association, subcontractors and  
36 design professionals, and their insurers who are known to the respondent to be on notice  
37 of the claim, no later than 10 days prior to the case management meeting, and shall  
38 specify its date, time, and location. The dispute resolution facilitator in consultation with  
39 the respondent, shall maintain a contact list of the participating parties.

40 (2) No later than 10 days prior to the case management meeting, the dispute resolution  
41 facilitator shall disclose to the parties all matters that could cause a person aware of the  
42 facts to reasonably entertain a doubt that the proposed dispute resolution facilitator would  
43 be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include  
44 the existence of any ground specified in Section 170.1 of the Code of Civil Procedure for  
45 disqualification of a judge, any attorney-client relationship the facilitator has or had with  
46 any party or lawyer for a party to the dispute resolution process, and any professional or  
47 significant personal relationship the facilitator or his or her spouse or minor child living  
48 in the household has or had with any party to the dispute resolution process. The

1 disclosure shall also be provided to any subsequently noticed subcontractor or design  
2 professional within 10 days of the notice.

3 (3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to  
4 comply with this paragraph and any party to the dispute resolution process serves a notice  
5 of disqualification prior to the case management meeting. If the dispute resolution  
6 facilitator complies with this paragraph, he or she shall be disqualified by the court on the  
7 basis of the disclosure if any party to the dispute resolution process serves a notice of  
8 disqualification prior to the case management meeting.

9 (4) If the parties cannot mutually agree to a dispute resolution facilitator, then each  
10 party shall submit a list of three dispute resolution facilitators. Each party may then strike  
11 one nominee from the other parties' list, and petition the court, pursuant to the procedure  
12 described in subdivisions (n) and (o), for final selection of the dispute resolution  
13 facilitator. The court may issue an order for final selection of the dispute resolution  
14 facilitator pursuant to this paragraph.

15 (5) Any subcontractor or design professional who receives notice of the association's  
16 claim without having previously received timely notice of the meet and confer to select  
17 the dispute resolution facilitator shall be notified by the respondent regarding the name,  
18 address, and telephone number of the dispute resolution facilitator. Any such  
19 subcontractor or design professional may serve upon the parties and the dispute  
20 resolution facilitator a written objection to the dispute resolution facilitator within 15  
21 days of receiving notice of the claim. Within seven days after service of this objection,  
22 the subcontractor or design professional may petition the superior court to replace the  
23 dispute resolution facilitator. The court may replace the dispute resolution facilitator only  
24 upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set  
25 forth in this subdivision shall constitute a waiver of the right to challenge the dispute  
26 resolution facilitator.

27 (6) The costs of the dispute resolution facilitator shall be apportioned in the following  
28 manner: one-third to be paid by the association; one-third to be paid by the respondent;  
29 and one-third to be paid by the subcontractors and design professionals, as allocated  
30 among them by the dispute resolution facilitator. The costs of the dispute resolution  
31 facilitator shall be recoverable by the prevailing party in any subsequent litigation  
32 pursuant to Section 1032 of the Code of Civil Procedure, provided however that any  
33 nonsettling party may, prior to the filing of the complaint, petition the facilitator to  
34 reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling  
35 party. The determination of the dispute resolution facilitator with respect to the allocation  
36 of these costs shall be binding in any subsequent litigation. The dispute resolution  
37 facilitator shall take into account all relevant factors and equities between all parties in  
38 the dispute resolution process when reallocating costs.

39 (7) In the event the dispute resolution facilitator is replaced at any time, the case  
40 management statement created pursuant to subdivision (h) shall remain in full force and  
41 effect.

42 (8) The dispute resolution facilitator shall be empowered to enforce all provisions of  
43 this section.

44 (g)(1) No later than the case management meeting, the parties shall begin to generate a  
45 data compilation showing the following information regarding the alleged defects at  
46 issue:

47 (A) The scope of the work performed by each potentially responsible subcontractor.

48 (B) The tract or phase number in which each subcontractor provided goods or services,  
49 or both.

1 (C) The units, either by address, unit number, or lot number, at which each  
2 subcontractor provided goods or services, or both.

3 (2) This data compilation shall be updated as needed to reflect additional information.  
4 Each party attending the case management meeting, and any subsequent meeting  
5 pursuant to this section, shall provide all information available to that party relevant to  
6 this data compilation.

7 (h) At the case management meeting, the parties shall, with the assistance of the dispute  
8 resolution facilitator, reach agreement on a case management statement, which shall set  
9 forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties  
10 may dispense with one or more of these elements if they agree that it is appropriate to do  
11 so. The case management statement shall provide that the following elements shall take  
12 place in the following order:

13 (1) Establishment of a document depository, located in the county where the project is  
14 located, for deposit of documents, defect lists, demands, and other information provided  
15 for under this section. All documents exchanged by the parties and all documents created  
16 pursuant to this subdivision shall be deposited in the document depository, which shall be  
17 available to all parties throughout the pre-filing dispute resolution process and in any  
18 subsequent litigation. When any document is deposited in the document depository, the  
19 party depositing the document shall provide written notice identifying the document to all  
20 other parties. The costs of maintaining the document depository shall be apportioned  
21 among the parties in the same manner as the costs of the dispute resolution facilitator.

22 (2) Provision of a more detailed list of defects by the association to the respondent after  
23 the association completes a visual inspection of the project. This list of defects shall  
24 provide sufficient detail for the respondent to ensure that all potentially responsible  
25 subcontractors and design professionals are provided with notice of the dispute resolution  
26 process. If not already completed prior to the case management meeting, the Notice of  
27 Commencement of Legal Proceeding shall be served by the respondent on all additional  
28 subcontractors and design professionals whose potential responsibility appears on the  
29 face of the more detailed list of defects within seven days of receipt of the more detailed  
30 list. The respondent shall serve a copy of the case management statement, including the  
31 name, address, and telephone number of the dispute resolution facilitator, to all the  
32 potentially responsible subcontractors and design professionals at the same time.

33 (3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and  
34 design professionals.

35 (4) Invasive testing conducted by the association, if the association deems appropriate.  
36 All parties may observe and photograph any testing conducted by the association  
37 pursuant to this paragraph, but may not take samples or direct testing unless, by mutual  
38 agreement, costs of testing are shared by the parties.

39 (5) Provision by the association of a comprehensive demand which provides sufficient  
40 detail for the parties to engage in meaningful dispute resolution as contemplated under  
41 this section.

42 (6) Invasive testing conducted by the respondent, subcontractors, and design  
43 professionals, if they deem appropriate.

44 (7) Allowance for modification of the demand by the association if new issues arise  
45 during the testing conducted by the respondent, subcontractor, or design professionals.

46 (8) Facilitated dispute resolution of the claim, with all parties, including peripheral  
47 parties, as appropriate, and insurers, if any, present and having settlement authority. The  
48 dispute resolution facilitators shall endeavor to set specific times for the attendance of  
49 specific parties at dispute resolution sessions. If the dispute resolution facilitator does not

1 set specific times for the attendance of parties at dispute resolution sessions, the dispute  
2 resolution facilitator shall permit those parties to participate in dispute resolution sessions  
3 by telephone.

4 (i) In addition to the foregoing elements of the case management statement described in  
5 subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator  
6 may include any or all of the following elements in a case management statement: the  
7 exchange of consultant or expert photographs; expert presentations; expert meetings; or  
8 any other mechanism deemed appropriate by the parties in the interest of resolving the  
9 dispute.

10 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the time  
11 the case management statement is established, set deadlines for the occurrence of each  
12 event set forth in the case management statement, taking into account such factors as the  
13 size and complexity of the case, and the requirement of this section that this dispute  
14 resolution process not exceed 180 days absent agreement of the parties to an extension of  
15 time.

16 (k)(1)(A) At a time to be determined by the dispute resolution facilitator, the  
17 respondent may submit to the association all of the following:

18 (i) A request to meet with the board to discuss a written settlement offer.

19 (ii) A written settlement offer, and a concise explanation of the reasons for the terms of  
20 the offer.

21 (iii) A statement that the respondent has access to sufficient funds to satisfy the  
22 conditions of the settlement offer.

23 (iv) A summary of the results of testing conducted for the purposes of determining the  
24 nature and extent of defects, if this testing has been conducted, unless the association  
25 provided the respondent with actual test results.

26 (B) If the respondent does not timely submit the items required by this subdivision, the  
27 association shall be relieved of any further obligation to satisfy the requirements of this  
28 subdivision only.

29 (C) No less than 10 days after the respondent submits the items required by this  
30 paragraph, the respondent and the board of directors of the association shall meet and  
31 confer about the respondent's settlement offer.

32 (D) If the association's board of directors rejects a settlement offer presented at the  
33 meeting held pursuant to this subdivision, the board shall hold a meeting open to each  
34 member of the association. The meeting shall be held no less than 15 days before the  
35 association commences an action for damages against the respondent.

36 (E) No less than 15 days before this meeting is held, a written notice shall be sent to  
37 each member of the association specifying all of the following:

38 (i) That a meeting will take place to discuss problems that may lead to the filing of a  
39 civil action, and the time and place of this meeting.

40 (ii) The options that are available to address the problems, including the filing of a civil  
41 action and a statement of the various alternatives that are reasonably foreseeable by the  
42 association to pay for those options and whether these payments are expected to be made  
43 from the use of reserve account funds or the imposition of regular or special assessments,  
44 or emergency assessment increases.

45 (iii) The complete text of any written settlement offer, and a concise explanation of the  
46 specific reasons for the terms of the offer submitted to the board at the meeting held  
47 pursuant to subdivision (d) that was received from the respondent.

1 (F) The respondent shall pay all expenses attributable to sending the settlement offer to  
2 all members of the association. The respondent shall also pay the expense of holding the  
3 meeting, not to exceed three dollars (\$3) per association member.

4 (G) The discussions at the meeting and the contents of the notice and the items required  
5 to be specified in the notice pursuant to paragraph (E) are privileged communications and  
6 are not admissible in evidence in any civil action, unless the association consents to their  
7 admission.

8 (H) No more than one request to meet and discuss a written settlement offer may be  
9 made by the respondent pursuant to this subdivision.

10 (I) Except for the purpose of in camera review as provided in subdivision (c) of Section  
11 1375.05, all defect lists and demands, communications, negotiations, and settlement  
12 offers made in the course of the prelitigation dispute resolution process provided by this  
13 section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the  
14 Evidence Code and all applicable decisional law. This inadmissibility shall not be  
15 extended to any other documents or communications which would not otherwise be  
16 deemed inadmissible.

17 (m) Any subcontractor or design professional may, at any time, petition the dispute  
18 resolution facilitator to release that party from the dispute resolution process upon a  
19 showing that the subcontractor or design professional is not potentially responsible for  
20 the defect claims at issue. The petition shall be served contemporaneously on all other  
21 parties, who shall have 15 days from the date of service to object. If a subcontractor or  
22 design professional is released, and it later appears to the dispute resolution facilitator that  
23 it may be a responsible party in light of the current defect list or demand, the respondent  
24 shall renotify the party as provided by paragraph (2) of subdivision (e), provide a copy of  
25 the current defect list or demand, and direct the party to attend a dispute resolution  
26 session at a stated time and location. A party who subsequently appears after having been  
27 released by the dispute resolution facilitator shall not be prejudiced by its absence from  
28 the dispute resolution process as the result of having been previously released by the  
29 dispute resolution facilitator.

30 (n) Any party may, at any time, petition the superior court in the county where the  
31 project is located, upon a showing of good cause, and the court may issue an order, for  
32 any of the following, or for appointment of a referee to resolve a dispute regarding any of  
33 the following:

34 (1) To take a deposition of any party to the process, or subpoena a third party for  
35 deposition or production of documents, which is necessary to further prelitigation  
36 resolution of the dispute.

37 (2) To resolve any disputes concerning inspection, testing, production of documents, or  
38 exchange of information provided for under this section.

39 (3) To resolve any disagreements relative to the timing or contents of the case  
40 management statement.

41 (4) To authorize internal extensions of timeframes set forth in the case management  
42 statement.

43 (5) To seek a determination that a settlement is a good faith settlement pursuant to  
44 Section 877.6 of the Code of Civil Procedure and all related authorities. The page  
45 limitations and meet and confer requirements specified in this section shall not apply to  
46 these motions, which may be made on shortened notice. Instead, these motions shall be  
47 subject to other applicable state law, rules of court, and local rules. A determination made  
48 by the court pursuant to this motion shall have the same force and effect as the  
49 determination of a postfiling application or motion for good faith settlement.



1 (6) To ensure compliance, on shortened notice, with the obligation to provide a  
2 Statement of Insurance pursuant to paragraph (2) of subdivision (e).

3 (7) For any other relief appropriate to the enforcement of the provisions of this section,  
4 including the ordering of parties, and insurers, if any, to the dispute resolution process  
5 with settlement authority.

6 (o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior court in  
7 the county in which the project is located. The court shall hear and decide the petition  
8 within 10 days after filing. The petitioning party shall serve the petition on all parties,  
9 including the date, time, and location of the hearing no later than five business days prior  
10 to the hearing. Any responsive papers shall be filed and served no later than three  
11 business days prior to the hearing. Any petition or response filed under this section shall  
12 be no more than three pages in length.

13 (2) All parties shall meet with the dispute resolution facilitator, if one has been  
14 appointed and confer in person or by the telephone prior to the filing of that petition to  
15 attempt to resolve the matter without requiring court intervention.

16 (p) As used in this section:

17 (1) "Association" shall have the same meaning as defined in subdivision (a) of Section  
18 1351.

19 (2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

20 (3) "Common interest development" shall have the same meaning as in subdivision (c)  
21 of Section 1351, except that it shall not include developments or projects with less than  
22 20 units.

23 (q) The alternative dispute resolution process and procedures described in this section  
24 shall have no application or legal effect other than as described in this section.

25 (r) This section shall become operative on July 1, 2002, however it shall not apply to  
26 any pending suit or claim for which notice has previously been given.

27 (s) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is  
28 repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or  
29 extends the dates on which it becomes inoperative and is repealed.

30 1375.05. (a) Upon the completion of the mandatory pre-filing dispute resolution process  
31 described in Section 1375, if the parties have not settled the matter, the association or its  
32 assignee may file a complaint in the superior court in the county in which the project is  
33 located. Those matters shall be given trial priority.

34 (b) In assigning trial priority, the court shall assign the earliest possible trial date,  
35 taking into consideration the pre-trial preparation completed pursuant to Section 1375, and  
36 shall deem the complaint to have been filed on the date of service of the Notice of  
37 Commencement of Legal Proceeding described under Section 1375.

38 (c) Any respondent, subcontractor, or design professional who received timely prior  
39 notice of the inspections and testing conducted under Section 1375 shall be prohibited  
40 from engaging in additional inspection or testing, except if all of the following specific  
41 conditions are met, upon motion to the court:

42 (1) There is an insurer for a subcontractor or design professional, that did not have  
43 timely notice that legal proceedings were commenced under Section 1375 at least 30 days  
44 prior to the commencement of inspections or testing pursuant to paragraph (6) of  
45 subdivision (h) of Section 1375.

46 (2) The insurer's insured did not participate in any inspections or testing conducted  
47 under the provisions of paragraph (6) of subdivision (h) of Section 1375.

1 (3) The insurer has, after receiving notice of a complaint filed in superior court under  
2 subdivision (a), retained separate counsel, who did not participate in the Section 1375  
3 dispute resolution process, to defend its insured as to the allegations in the complaint.

4 (4) It is reasonably likely that the insured would suffer prejudice if additional  
5 inspections or testing are not permitted.

6 (5) The information obtainable through the proposed additional inspections or testing is  
7 not available through any reasonable alternative sources.

8 If the court permits additional inspections or testing upon finding that these  
9 requirements are met, any additional inspections or testing shall be limited to the extent  
10 reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among  
11 all similarly situated parties to ensure that they occur without unnecessary duplication.  
12 For purposes of providing notice to an insurer prior to inspections or testing under  
13 paragraph (6) of subdivision (h) of Section 1375, if notice of the proceedings was not  
14 provided by the insurer's insured, notice may be made via certified mail either by the  
15 subcontractor, design professional, association, or respondent to the address specified in  
16 the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section  
17 1375. Nothing herein shall affect the rights of an intervenor who files a complaint in  
18 intervention. If the association alleges defects that were not specified in the prefiling  
19 dispute resolution process under Section 1375, the respondent, subcontractor, and design  
20 professionals shall be permitted to engage in testing or inspection necessary to respond to  
21 the additional claims. A party who seeks additional inspections or testing based upon the  
22 amendment of claims shall apply to the court for leave to conduct those inspections or  
23 that testing. If the court determines that it must review the defect claims alleged by the  
24 association in the prefiling dispute resolution process in order to determine whether the  
25 association alleges new or additional defects, this review shall be conducted in camera.  
26 Upon objection of any party, the court shall refer the matter to a judge other than the  
27 assigned trial judge to determine if the claim has been amended in such a way as to  
28 require additional testing or inspection.

29 (d) Any subcontractor or design professional who had notice of the facilitated dispute  
30 resolution conducted under Section 1375 but failed to attend, or attended without  
31 settlement authority, shall be bound by the amount of any settlement reached in the  
32 facilitated dispute resolution in any subsequent trial, although the affected party may  
33 introduce evidence as to the allocation of the settlement. Any party who failed to  
34 participate in the facilitated dispute resolution because the party did not receive timely  
35 notice of the mediation shall be relieved of any obligation to participate in the settlement.  
36 Notwithstanding any privilege applicable to the prefiling dispute resolution process  
37 provided by Section 1375, evidence may be introduced by any party to show whether a  
38 subcontractor or design professional failed to attend or attended without settlement  
39 authority. The binding effect of this subdivision shall in no way diminish or reduce a  
40 nonsettling subcontractor or design professional's right to defend itself or assert all  
41 available defenses relevant to its liability in any subsequent trial. For purposes of this  
42 subdivision, a subcontractor or design professional shall not be deemed to have attended  
43 without settlement authority because it asserted defenses to its potential liability.

44 (e) Notice of the facilitated dispute resolution conducted under Section 1375 must be  
45 mailed by the respondent no later than 20 days prior to the date of the first facilitated  
46 dispute resolution session to all parties. Notice shall also be mailed to each of these  
47 parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any  
48 subsequent facilitated dispute resolution notices shall be served by any means reasonably  
49 calculated to provide those parties actual notice.

1 (f) As to the complaint, the order of discovery shall, at the request of any defendant,  
2 except upon a showing of good cause, permit the association's expert witnesses to be  
3 deposed prior to any percipient party depositions. The depositions shall, at the request of  
4 the association be followed immediately by the defendant's experts and then by the  
5 subcontractors' and design professionals' experts, except on a showing of good cause.  
6 For purposes of this section, in determining what constitutes "good cause," the court shall  
7 consider, among other things, the goal of early disclosure of defects and whether the  
8 expert is prepared to render a final opinion, except that the court may modify the scope of  
9 any expert's deposition to address those concerns.

10 (g)(1) The only method of seeking judicial relief for the failure of the association or the  
11 respondent to complete the dispute resolution process under Section 1375 shall be the  
12 assertion, as provided for in this subdivision, of a procedural deficiency to an action for  
13 damages by the association against the respondent after that action has been filed. A  
14 verified application asserting a procedural deficiency shall be filed with the court no later  
15 than 90 days after the answer to the plaintiff's complaint has been served, unless the court  
16 finds that extraordinary conditions exist.

17 (2) Upon the verified application of the association or the respondent alleging  
18 substantial noncompliance with Section 1375, the court shall schedule a hearing within  
19 21 days of the application to determine whether the association or respondent has  
20 substantially complied with this section. The issue may be determined upon affidavits or  
21 upon oral testimony, in the discretion of the court.

22 (3)(A) If the court finds that the association or the respondent did not substantially  
23 comply with this paragraph, the court shall stay the action for up to 90 days to allow the  
24 noncomplying party to establish substantial compliance. The court shall set a hearing  
25 within 90 days to determine substantial compliance. At any time, the court may, for good  
26 cause shown, extend the period of the stay upon application of the noncomplying party.

27 (B) If, within the time set by the court pursuant to this paragraph, the association or the  
28 respondent has not established that it has substantially complied with this section, the  
29 court shall determine if, in the interest of justice, the action should be dismissed without  
30 prejudice, or if another remedy should be fashioned. Under no circumstances shall the  
31 court dismiss the action with prejudice as a result of the association's failure to  
32 substantially comply with this section. In determining the appropriate remedy, the court  
33 shall consider the extent to which the respondent has complied with this section.

34 (h) This section shall become operative on July 1, 2002, however it shall not apply to  
35 any pending action or proceeding.

36 (i) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is  
37 repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or  
38 extends the dates on which it becomes inoperative and is repealed.

39 1375.1. (a) As soon as is reasonably practicable after the association and the builder  
40 have entered into a settlement agreement or the matter has otherwise been resolved  
41 regarding alleged defects in the common areas, alleged defects in the separate interests  
42 that the association is obligated to maintain or repair, or alleged defects in the separate  
43 interests that arise out of, or are integrally related to, defects in the common areas or  
44 separate interests that the association is obligated to maintain or repair, where the defects  
45 giving rise to the dispute have not been corrected, the association shall, in writing, inform  
46 only the members of the association whose names appear on the records of the  
47 association that the matter has been resolved, by settlement agreement or other means,  
48 and disclose all of the following:

1 (1) A general description of the defects that the association reasonably believes, as of  
2 the date of the disclosure, will be corrected or replaced.

3 (2) A good faith estimate, as of the date of the disclosure, of when the association  
4 believes that the defects identified in paragraph (1) will be corrected or replaced. The  
5 association may state that the estimate may be modified.

6 (3) The status of the claims for defects in the design or construction of the common  
7 interest development that were not identified in paragraph (1) whether expressed in a  
8 preliminary list of defects sent to each member of the association or otherwise claimed  
9 and disclosed to the members of the association.

10 (b) Nothing in this section shall preclude an association from amending the disclosures  
11 required pursuant to subdivision (a), and any amendments shall supersede any prior  
12 conflicting information disclosed to the members of the association and shall retain any  
13 privilege attached to the original disclosures.

14 (c) Disclosure of the information required pursuant to subdivision (a) or authorized by  
15 subdivision (b) shall not waive any privilege attached to the information.

16 (d) For the purposes of the disclosures required pursuant to this section, the term  
17 “defects” shall be defined to include any damage resulting from defects.

## 18 CHAPTER 10. IMPROVEMENTS

19 1376. (a) Any covenant, condition, or restriction contained in any deed, contract,  
20 security instrument, or other instrument affecting the transfer or sale of, or any interest in,  
21 a common interest development that effectively prohibits or restricts the installation or  
22 use of a video or television antenna, including a satellite dish, or that effectively prohibits  
23 or restricts the attachment of that antenna to a structure within that development where  
24 the antenna is not visible from any street or common area, except as otherwise prohibited  
25 or restricted by law, is void and unenforceable as to its application to the installation or  
26 use of a video or television antenna that has a diameter or diagonal measurement of 36  
27 inches or less.

28 (b) This section shall not apply to any covenant, condition, or restriction, as described  
29 in subdivision (a), that imposes reasonable restrictions on the installation or use of a  
30 video or television antenna, including a satellite dish, that has a diameter or diagonal  
31 measurement of 36 inches or less. For purposes of this section, “reasonable restrictions”  
32 means those restrictions that do not significantly increase the cost of the video or  
33 television antenna system, including all related equipment, or significantly decrease its  
34 efficiency or performance and include all of the following:

35 (1) Requirements for application and notice to the association prior to the installation.

36 (2) Requirement of the owner of a separate interest, as defined in Section 1351, to  
37 obtain the approval of the association for the installation of a video or television antenna  
38 that has a diameter or diagonal measurement of 36 inches or less on a separate interest  
39 owned by another.

40 (3) Provision for the maintenance, repair, or replacement of roofs or other building  
41 components.

42 (4) Requirements for installers of a video or television antenna to indemnify or  
43 reimburse the association or its members for loss or damage caused by the installation,  
44 maintenance, or use of a video or television antenna that has a diameter or diagonal  
45 measurement of 36 inches or less.

46 (c) Whenever approval is required for the installation or use of a video or television  
47 antenna, including a satellite dish, the application for approval shall be processed by the

1 appropriate approving entity for the common interest development in the same manner as  
2 an application for approval of an architectural modification to the property, and the  
3 issuance of a decision on the application shall not be willfully delayed.

4 (d) In any action to enforce compliance with this section, the prevailing party shall be  
5 awarded reasonable attorney's fees.

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